

BEFORE THE

COPYRIGHT ARBITRATION ROYALTY PANEL
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DISTRIBUTION OF 1990,

1991 AND 1992

CABLE ROYALTY FUNDS

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Docket No.

94-3-CARP-CD90-92

Hearing Room 414, Fourth Floor
 Madison Building
 Library of Congress
 101 Independence Avenue, S.E.
 Washington D.C.

Friday, December 15, 1995

The above-entitled matter came on for hearing,
 pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE MEL R. JIGANTI, Chairperson

THE HONORABLE JOHN B. FARMAKIDES

THE HONORABLE RONALD WERTHEIM

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Richard V. Ducey				
By Mr. Lane		2087		
By Mr. Hester		2214		
By Mr. Garrett		2253		
By Mr. Campanelli		2277		
By Mr. Cosentino		2291		
By Mr. Stewart			2319	

E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Marked</u>	<u>Received</u>
<u>Public Broadcasting</u>			
4-X	Schematic	2253	

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P-R-O-C-E-E-D-I-N-G-S

(9:34 a.m.)

WHEREUPON,

RICHARD V. DUCEY

was recalled as a witness and, having been previously duly sworn, resumed the witness stand, was examined and testified as follows:

ARBITRATOR FARMAKIDES: While Mr. Lane is getting organized, I have a question that I wanted to ask you. You need not answer it now, but I want you to think about it. I was intrigued with your graphs yesterday and your maps, and I wondered could you look, for example, at Exhibit 16, or some other exhibit if you think of one that would better illustrate the question that I want to ask, and I -- I would like, please, if you would take one of those cable systems in Exhibit 16, which is a Form 1 or a Form 2 system, and tell me what you would advise that system consider in maximizing its cashflow. Then I want you to do the same thing, but take one of those cable systems that is a Form 3 system, and tell me what you would advise that system in that exhibit to consider to maximize its cashflow. Could you do it?

THE WITNESS: Sure.

ARBITRATOR FARMAKIDES: Okay. Now, we

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1 need not do it now, but we can do it at some
2 convenient time during the year -- during the day.

3 The other thing -- it's a related matter
4 -- what would you advise the first system, the Form 1
5 system, and the third, the Form 3 system, what would
6 you advise them separately to reduce, to minimize the
7 compulsory license fee that they pay for carrying
8 distant signals?

9 Okay. Just think about it, and whenever
10 you wish, whenever Mr. Lane is finished, perhaps he
11 can explore it further.

12 THE WITNESS: Okay. Fine.

13 ARBITRATOR FARMAKIDES: Thank you.

14 THE WITNESS: Sure.

15 CROSS EXAMINATION (continued)

16 BY MR. LANE:

17 Q Mr. Ducey, what does a Form 1 cable system
18 pay in royalties every six months?

19 A I don't know the precise figure.

20 Q Do you know that it's \$28?

21 A No.

22 Q Do you know that it doesn't change at all,
23 regardless of how many signals they carry?

24 A No.

25 ARBITRATOR FARMAKIDES: But it's the

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1 relative difference that I'm focusing on.

2 MR. LANE: Judge --

3 ARBITRATOR FARMAKIDES: I'm not really
4 concerned about one or two. It's one or two and
5 three.

6 MR. LANE: Okay. I --

7 ARBITRATOR FARMAKIDES: Anyway, I will --

8 MR. LANE: My only point is, Judge
9 Farmakides, that Form 1's only pay \$28 every six
10 months, regardless. They could carry 20 distant
11 signals or one; it won't make any difference.

12 ARBITRATOR FARMAKIDES: That's true.
13 There's no doubt about that.

14 MR. LANE: So it's kind of hard to say,
15 how can they minimize -- the royalty is \$28. You
16 can't get too much lower than that.

17 ARBITRATOR FARMAKIDES: Well, first of
18 all, I was asking cashflow. Then I was --

19 MR. LANE: Right. That's a different
20 question, but your last question was how can they
21 minimize --

22 ARBITRATOR FARMAKIDES: That's right.

23 MR. LANE: -- minimize the royalties, and
24 for Form 1's there's really --

25 ARBITRATOR FARMAKIDES: So with respect to

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1 -- okay. We'll explore that.

2 MR. LANE: Okay.

3 BY MR. LANE:

4 Q Do you know how Form 2 royalties are
5 calculated, Mr. Ducey?

6 A I don't know.

7 ARBITRATOR FARMAKIDES: I do, Mr. Lane.

8 MR. LANE: Okay.

9 (Laughter.)

10 If you were only my witness, I would have
11 a great time.

12 (Laughter.)

13 BY MR. LANE:

14 Q Could you turn to page 3 of your
15 testimony, please?

16 A Okay.

17 Q In the first full paragraph on that page
18 you talk about your understanding that the Joint
19 Sports Claimants will be submitting the results of the
20 cable operator survey. Do you see that?

21 A Yes, I do.

22 Q Did you ever see those surveys?

23 A Eventually I did, yes.

24 Q Before you wrote this testimony, did you
25 see the surveys?

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1 A I know I saw the one for the -- for the
2 1990 results, and I can't remember exactly when I saw
3 the one submitted in this case.

4 Q What do you understand those surveys to do
5 or to attempt to do?

6 A Well, the surveys of the cable operator is
7 to measure the valuation of different program content
8 types in the distant signal marketplace.

9 Q And what do you base that on?

10 A My understanding of the nature of the
11 measures and from whom the measures or data about the
12 measures were collected.

13 Q What have you seen related to the Bortz
14 survey?

15 A I've read the report that was prepared by
16 -- by Bortz.

17 Q Did you look at individual questionnaire
18 responses?

19 A No.

20 Q Did you analyze anything other than just
21 read the report?

22 A In terms of individual data points, no,
23 just read the report.

24 Q In terms of anything.

25 A I read the report and, you know, came to

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1 my conclusions based upon the information presented in
2 the report.

3 Q Now, in the last sentence of that
4 paragraph, you indicate that the study is a direct
5 measure of relative value of distant signal programs.
6 What do you base that on?

7 A Well, again, it's -- the survey was
8 designed to be an attitudinal measure of relative
9 valuation cable operators place on different program
10 types. That was -- you know, there's different
11 research terms -- space floating. On the face of it,
12 those questions apparently asked cable operators to
13 evaluate different kinds of program types, and the
14 survey methodology was designed to collect appropriate
15 data. And that's what I based it on -- my
16 understanding of how the survey was designed and
17 conducted.

18 Q All right. Did you compare the program
19 types asked in the survey with the categories defined
20 by the tribunal?

21 A Yes.

22 Q And what was your conclusion from that
23 comparison?

24 A That I think the descriptors of the
25 different category -- program category types were

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1 appropriate. There is some variation in terms of the
2 wording, and then the specifics of how the tribunal
3 historically has defined program types. There is some
4 variation there, but in terms of the dominant
5 impression I think that the category types are
6 appropriately identified for measurement.

7 Q Okay. And what do you mean by the
8 "dominant impression"?

9 A Well, when you're doing attitudinal
10 research or survey research, you need to measure
11 people's perceptions, or valuations in this case, and
12 you need to create an impression that people respond
13 to psychologically. And you want to have a good
14 correspondence between what it is they're responding
15 to and what it is you're trying to measure.

16 That's construct validity in survey
17 research, but you can't go on ad nauseam being
18 extremely precise with, you know, a footnote kind of
19 approach to a survey question. You want to have
20 something that creates a shared understanding between
21 the survey interviewer and the respondent, and then
22 they react to that. So you create an impression of
23 shared meaning in a communication sense, and ask the
24 respondent to provide an appropriate answer structured
25 in the form of however the question is being measured.

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1 So dominant impression is you could, in a
2 written form for example, in a different kind of
3 proceeding, go on and very precisely detail individual
4 circumstances and create a measurement that way. But
5 in survey research, it is far more practical to ask a
6 question the way that elicits a shared understanding
7 and capture that response.

8 Q Now, how much would a dominant -- how much
9 percentage of the actual definition would a dominant
10 impression have to be, or would an impression have to
11 be to become a dominant impression in your view?

12 A That's subjective. There is no real way
13 to measure that precisely in psychological research.
14 So it's -- there are other kinds of tests to do an
15 assessment of how valid the measure is, and one of
16 those is called predictive validity -- predictive
17 validity.

18 In other words, if you get one set of
19 results one time, if you apply the same kind of
20 measure again, would you get basically the same
21 result? In other words, can you use one set of
22 results to predict another set of results? The same
23 measure administered at a different time. And that's
24 also -- an approach called reliability does the same
25 kind of thing.

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1 So if, for example, you had a series of
2 measures of cable operator valuations of different
3 program types, and each of those measures came out
4 about the same, say over time or with different groups
5 of cable operators, you'd have, as a researcher,
6 greater confidence that there is both construct
7 validity and predictive validity, and that the
8 measuring apparatus is reliable. It tends to return
9 the same results every time.

10 Q And it could also be, could it not, that
11 the definition is always that far off from the
12 definition used by the tribunal?

13 A From a theoretical standpoint, yes, that
14 could be the case. Again, the more you have
15 convergence, the more times you measure something in
16 psychological survey research, and the closer those
17 data points tend to huddle together, the research
18 conclusion is that you're -- you're measuring what you
19 think you're measuring. There is construct validity.

20 So although it could be the case that
21 you're not measuring what you think you're measuring,
22 the closer the data points are, the research
23 conclusion is the data supports this conclusion that,
24 in fact, you're measuring what you think you're
25 measuring -- in this case cable operator valuation of

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1 distant signal program types.

2 Q Okay. But they are the program types that
3 are asked in the questionnaire, correct?

4 A Yes.

5 Q Okay. Have you examined the definitions
6 of the tribunal and compared those to the statements
7 in the questionnaires?

8 A Yes, I have.

9 Q And what is your view of how close they
10 are?

11 A I think that they are very close. If you
12 were to do a Venn diagram kind of approach where you
13 drew a circle around all of the different things that
14 would belong to one of the program types, as defined
15 by the Copyright Royalty Tribunal, and another
16 conceptual circle, you'll find all of the things that
17 cable operators might think of when you mention that
18 program type to them. I think that there would be a
19 large overlap between those two circles.

20 In other words, the correspondence between
21 the words used by the tribunal to defined program
22 types and the words in the survey question I think
23 would -- would engender an overlap.

24 Q I think you get the award for the most
25 exhibits of any one witness in this case, so --

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1 (Laughter.)

2 Could you look at Exhibit 3 for a moment,
3 please?

4 A Okay.

5 Q Would you just look at WGN for a moment?

6 A Okay.

7 Q Okay. On the third page you refer to news
8 programs, correct?

9 A Yes.

10 Q Okay. Now, if you look at -- back to
11 WTBS, is there any similar entry for news programs on
12 WTBS?

13 A For TBS, the closest thing would be Good
14 News, I think, in terms of a news program.

15 Q Okay. But there is a daily news program,
16 is there not, on WTBS?

17 A Yes, there is.

18 Q And do you know what that is?

19 A I believe it's CNN.

20 Q Okay. It's actually Headline News, is
21 that --

22 A Headline News, CNN.

23 Q Okay. And do you know what kind of
24 program that is, for tribunal purposes, or for the
25 panel purposes?

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1 A I believe it's syndicated programming.

2 Q Okay. That's a syndicated program.

3 A Yes.

4 Q So the regularly scheduled news program on
5 WTBS is a syndicated program?

6 A That's my understanding, yes.

7 Q Okay. Now, yesterday when you showed the
8 clips, and I know --

9 ARBITRATOR WERTHEIM: Excuse me a second.
10 Did you say that's a daily news program?

11 THE WITNESS: CNN Headline News? Yes, I
12 believe it is.

13 ARBITRATOR WERTHEIM: Well, your exhibit
14 refers to Good News as a weekly program.

15 THE WITNESS: There are two separate news
16 programs we're talking about. Good News is one
17 program, and CNN Headline News is a different program,
18 not listed here because that's not -- that's a
19 syndicated program.

20 BY MR. LANE:

21 Q So the regularly scheduled news program on
22 WTBS is not part of your category, is that correct?

23 A That's correct.

24 Q And that's why you didn't list it here?

25 A Correct.

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1 Q And it's part of our category, right,
2 Program Suppliers?

3 A Yes.

4 CHAIRPERSON JIGANTI: I'm a little bit
5 confused. CNN --

6 MR. LANE: Headline News is a syndicated
7 program.

8 CHAIRPERSON JIGANTI: But is that a
9 distant signal?

10 THE WITNESS: Well, Turner -- WTBS is
11 owned by the Turner Broadcast System, which also owns
12 CNN Headline News, and they elect to carry their own
13 news service on the Atlanta, Georgia station, and they
14 syndicate that news service to a number of different
15 stations.

16 CHAIRPERSON JIGANTI: As a distant signal?

17 THE WITNESS: For -- well, it's a --

18 MR. LANE: Could I try some questions?

19 THE WITNESS: Yes.

20 BY MR. LANE:

21 Q Is Headline News a syndicated program?

22 A Yes.

23 Q And could you explain what a syndicated
24 program is, very briefly?

25 A A syndicated program is a program that,

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1 for our purposes here, is broadcast by more than one
2 station.

3 Q Okay. So Headline News puts together a
4 30-minute package of news, information, whatever they
5 have in it, and then they go around and sell it to
6 stations around the country. Is that --

7 A Yes.

8 Q -- fair to say?

9 A Yes.

10 Q And that program then appears on, let's
11 just take WTBS, right?

12 A Yes.

13 Q Okay. And to the extent that WTBS is
14 carried as a distant signal, it carries Headline News
15 as a syndicated program, correct?

16 A That's correct.

17 Q And for compensation purposes under past
18 tribunal decisions, the proper place that any award
19 for Headline News goes is to our category, is that
20 correct?

21 A Yes, it is.

22 CHAIRPERSON JIGANTI: I don't have any
23 difficulty understanding that. It doesn't comport
24 with things of my local cable setup, so that's --

25 (Laughter.)

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1 -- not going to get involved in that. I'm
2 not here to do my own --

3 BY MR. LANE:

4 Q Okay. So if Headline News was carried to
5 other stations around the country, and those were
6 carried as distant signals, the cable system would
7 pick up Headline News on those stations --

8 A That's correct.

9 Q -- as a distant carriage, right?

10 A Yes.

11 Q And if there were compensation related to
12 those distant carriages of Headline News, they would
13 come to our category, correct?

14 A That's my understanding, yes.

15 Q Could you turn to page 4 of your
16 testimony, please?

17 A Okay.

18 Q Okay. Do you see in the fourth line from
19 the bottom of the page you refer to viewer avidity or
20 intensity?

21 A Yes.

22 Q Could you define that for us, please?

23 A Yes. As I defined yesterday, that is a
24 notion of intensity of preference or liking or
25 favorability for different kinds of programming.

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1 Q And how would you -- what would be some
2 ways you could measure that, in your judgment?

3 A From a survey research perspective, you
4 could create measures that would somehow be
5 measurements of preference -- intensity of liking,
6 favorable, less favorable, unfavorable, kinds of
7 attitudes towards different program types. There's a
8 range of different kinds of rating scales you might
9 use in administration of a survey, but it would be
10 generally asking people to react to words like
11 preference, liking, favorability.

12 Q Would it be an effort by viewers to -- I
13 think you referred to appointment TV yesterday. Is
14 that a term that --

15 A Yes.

16 Q -- you understand? What would that --
17 what does that mean?

18 A Well, it means -- it's an instrumental use
19 of television. In other words, of the two kinds of
20 television viewing that I was characterizing
21 yesterday, instrumental versus ritualistic,
22 ritualistic viewing is you turn the TV on and then
23 decide what to watch. Appointment TV is a recognition
24 on behalf of -- by the TV industry that, in fact,
25 people do seek out specific content, and essentially

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1 make an appointment with it.

2 I want to turn my TV on at a certain time
3 to watch a certain program, and so appointment TV is
4 a response by the TV industry to say, "Make an
5 appointment to watch this program at 8:00 tonight."

6 Q And would a measure of viewer intensity be
7 how much appointment TV works, or how successful it
8 is?

9 A I think so, yes.

10 Q Now, in your testimony, what is the
11 evidence that you've presented that addresses viewer
12 intensity?

13 A Well, there is some indirect evidence and
14 some direct evidence, based upon things that the
15 tribunal had expressed interest in in the past. In
16 terms of direct evidence, would be some of the
17 research, particularly the uses and gratifications
18 research, for example, which shows that there is a
19 difference in the kind of viewing people make of TV
20 programs.

21 Some programming is more important to
22 them, particularly when they are viewing that kind of
23 content instrumentally. Some kind of programming is
24 relatively less important to them when they're viewing
25 ritualistically. And there was one quote that I read

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1 yesterday from my testimony that says the total amount
2 of viewing is more predicted by ritualistic viewing.
3 The satisfaction with particular programming is
4 predicted more by instrumental viewing than letters
5 from cable subscribers that receive signals on a
6 distant signal basis to that station or to cable
7 operators about programming on that station.

8 News and other kinds of programming would
9 be direct evidence of avidity, intensity of preference
10 for certain programs on the part of subscribers
11 receiving signals on a distant signal basis. And then
12 going back to some of the kinds of indirect evidence
13 is that the cable operator's judgment clearly is that
14 news programming from distant signal is important, and
15 that also shows up in the subscriber preference survey
16 and it cannot be corroborated with other kinds of
17 indirect evidence.

18 And we have two kinds of exhibits there.
19 One was the actual programs, looking at the programs
20 because that seemed like something that people could
21 be interested in and get involved in from an
22 instrumental perspective. Is it informative and
23 exciting? Is it involving? And the math shows that
24 the Tacoma-Tuscaloosa situation really does not
25 prevail at all.

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1 In fact, the majority of distant signals
2 carried by Form 3 systems are, in fact, relatively
3 close in. And if you use that 150-mile circle as a
4 geographic reference point, the majority of situations
5 show that the signals are actually pretty close in.
6 So as a means of indirect evidence, it sort of stands
7 to reason that, in fact, from a regional perspective,
8 people living in Quincy certainly might be interested
9 in what's happening in St. Louis, from a news
10 perspective, from cultural affairs. They may even do
11 some shopping there. So it would be a combination of
12 direct and indirect evidence with those examples that
13 I think support a subscriber exists for station-
14 produced programs.

15 Q On page 5 of your testimony, you refer to
16 subscriber preferences, do you not?

17 A Yes.

18 Q Is that the same thing as viewer avidity
19 or viewer intensity?

20 A I think so, generally.

21 Q Now, in the middle of the first paragraph
22 on that page, you state that the judgments of cable
23 operators will determine which distant signals they
24 purchase, regardless of the extent to which they have
25 accurately gauged their subscribers' ultimate

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1 preferences or have weighed other factors in addition
2 to those preferences. Do you see that?

3 A Yes.

4 Q Is that a short-term judgment or
5 evaluation?

6 A If I understand your question properly,
7 the decision to carry a signal, how -- the length of
8 time that signal actually gets carried, is that what
9 you mean by length of the judgment?

10 Q No. I mean is it a short-term -- is this
11 a short-term evaluation, that it doesn't really matter
12 whether cable operators have accurately gauged their
13 subscribers' ultimate preferences or weighed other
14 factors?

15 A Well, cable operators make judgments about
16 what signals to carry. The preference of subscribers
17 is an important factor, so cable operators weigh that
18 along with other factors. If cable operators, for
19 example, make the judgment that a certain channel
20 doesn't need to be carried anymore, and they drop that
21 channel and pick up a new channel, from the cable
22 operator's perspective that may have been a mistake.

23 That may trigger letters, phone calls from
24 subscribers threatening to cancel, in which case the
25 operator says, "I better put that station back on

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1 somehow." Or, as we saw in the letters yesterday from
2 cable subscribers receiving these signals on a distant
3 signal basis, they will take other kinds of actions,
4 with local government officials, state government
5 officials, or even members of the U.S. Congress, to
6 try to create some remedy that satisfies them to get
7 that programming they want, and special arrangements
8 might be made to maybe not bring back the whole
9 channel but at least the portion of the channel, the
10 local news on these stations that was most interesting
11 to them.

12 Q So they don't make these judgments
13 regardless of subscriber preference?

14 A Oh, no. Subscriber preferences, as I say,
15 that's an important factor in the range of factors
16 cable operators consider as to what signals to carry.

17 Q Now, at the bottom of page 5 and the top
18 of page 6, you talk about the weather in a farming
19 region.

20 A Yes.

21 Q Can you relate that to this case for us?

22 A Well, analogies are always dangerous.
23 They are meant to simplify or illustrate in a
24 different way a different frame of reference point.
25 But essentially, the point I was trying to make here

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1 is the difference between indirect measures of
2 something and actual measurements. So if in the
3 winter you are trying to explain the crop yield the
4 previous fall, you could do that in a couple of
5 different ways.

6 One way is you could do it indirectly.
7 You could look at the prevailing weather patterns
8 during the previous summer, and you can look at what
9 kind of fertilizer farmers used. You could look at
10 the weather. You can look at a number of different
11 factors and with all of those together create some
12 sort of equation that would predict how much of a crop
13 was actually harvested in the fall.

14 You could do all of those different
15 factors to model from a statistical perspective, or --
16 or predict what would happen at harvest time. But if
17 you're in the winter, another measure you could take
18 is how many bushels you took out of the field. You
19 have a direct measure of what happened in the harvest.

20 So rather than avoid the direct measure,
21 which is how many bushels you took out of the field,
22 you can instead rely on -- you could rely on a direct
23 measurement rather than trying to go back to all of
24 these predictive measures of whether fertilizer, and
25 so on.

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1 Q Similarly, couldn't you have measured the
2 behavior of cable operators in 1990 and '91 and '92?

3 A Yes.

4 Q And that would be similar, would it not,
5 to measuring the actual yields in your example?

6 A Well, in my example, what we're trying to
7 measure here is -- is valuation, which since there is
8 a compulsory component to this marketplace the
9 behavior gets a little bit complex to measure. It's
10 a -- the best you can do is a psychological measure of
11 cable operators and say, "Given a certain range of --
12 of content types, how would you allocate value among
13 those?" That seems to be the most appropriate
14 measure, and that's an attitudinal measure.

15 How much is something worth to somebody,
16 you can -- you can watch what they buy. But if
17 everything -- if the price is fixed in a compulsory
18 sense, the next best measure you can get is their
19 psychological evaluation.

20 Q Okay. Were you here for Mr. Stewart's
21 opening yesterday?

22 A Yes, I was.

23 Q Did you hear him say that there was an
24 actual marketplace in 1990 through '92?

25 A Yes.

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1 Q And since there was an actual marketplace,
2 is there any reason we couldn't examine behavior
3 during that period?

4 A Well, as I just said, the -- unless you
5 have a different idea of what to measure in terms of
6 behavior, the best thing that occurs to me is
7 psychologically how cable operators value different
8 signals. That's -- that's the relevant thing to
9 measure as I think about the way this marketplace
10 operates in terms of allocating the royalty pool.

11 Q Well, what if -- wouldn't that be like
12 measuring going and asking the farmers how they valued
13 the different crops that they put in? Isn't that what
14 the Bortz survey did?

15 A Made -- ask --

16 Q Asking the farmers what the relative value
17 of the different crops that they put it into go along
18 with your analogy here.

19 A I think in -- in the marketplace you're
20 talking about there is -- there is different stages.
21 There is the wholesale, the retail level, and to some
22 extent the -- your analogy here to me is more like the
23 TV stations. They create a compilation of the
24 programs and then cable operators essentially buy
25 those.

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1 So that the farmers, to strain this
2 analogy yet further, are probably more akin to the
3 distant signal stations themselves and not so much the
4 cable operators. The cable operators to me are more
5 like the people that are buying those crop fields.

6 ARBITRATOR WERTHEIM: Would a direct
7 measure be, for example, the requirement on Form 3
8 that the -- in addition to reporting the distant
9 signals that are reported, the system should also
10 break down in these various program categories the
11 hours that each system is carrying?

12 THE WITNESS: The hours each distant
13 signal was carrying --

14 ARBITRATOR WERTHEIM: Yes.

15 THE WITNESS: -- on a system? That would
16 be a direct measure, but I don't think it would be the
17 appropriate direct measure of valuation. A better
18 direct measure, if you're going to measure behavior,
19 is to have the cable operators' report of the money
20 they're sending in to the Copyright Office, how they
21 would allocate that among the different program types
22 as defined by the Copyright Office.

23 ARBITRATOR WERTHEIM: Either one of the --
24 go ahead. You'd prefer that the royalties --

25 THE WITNESS: Well, yeah, I don't think

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1 the viewing -- the program hours is not an appropriate
2 measure of value.

3 ARBITRATOR WERTHEIM: Is there some reason
4 that the royalties could not be reported in that way,
5 aside from, you know, one more way before --

6 (Laughter.)

7 THE WITNESS: Well, but in the task of --
8 of what we're all in this room -- the task we're all
9 trying to pursue in this room is -- is to estimate how
10 cable operators would make those valuations, and if
11 there was a direct measure in the form of how they
12 would value different program types.

13 ARBITRATOR WERTHEIM: It would save years
14 of proceedings and expenses, wouldn't it? That's a
15 good, direct --

16 THE WITNESS: Yeah. I mean, if there was
17 -- if it was an unconstrained marketplace, then cable
18 operators would either on a channel-by-channel or a
19 program-by-program basis make those valuations and
20 that's how the marketplace would work.

21 ARBITRATOR WERTHEIM: Are you aware of any
22 reason why that hasn't been done?

23 THE WITNESS: No.

24 BY MR. LANE:

25 Q You state at the bottom of page 6 that

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1 evidence of subscriber viewing does not provide
2 evidence of avidity. Do you see that?

3 A Yes, I do.

4 Q Okay. Could you explain what you meant by
5 that?

6 A Yes. It goes to -- to use -- it uses a
7 research -- it uses the gratifications research
8 paradigm again. Watching a lot of TV content doesn't
9 necessarily mean that psychologically you're all that
10 satisfied with that content relative to other kinds of
11 content. Again, what predicts the amount of viewing
12 -- heavy viewers tend to be ritualistic viewers. They
13 view out of habit, and whatever content happens to be
14 on is less important to those kinds of viewers than
15 viewers who are instrumental viewers.

16 So avidity tends to be a preference,
17 satisfaction, how much they like a program. That
18 tends to be associated with specific viewing. "I'm
19 going to watch this now." And actually, those kinds
20 of viewers tend to be less heavy consumers of TV
21 programming. And the heavier consumers of TV
22 programming tend to be more ritualistic viewers, which
23 is they turn the TV on and then select from among the
24 options to watch TV.

25 Whereas, again, instrumental viewers

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1 become part of the TV audience, only because there's
2 something on there specifically that they want to
3 watch, and that's something that is informative to
4 them typically, or exciting to them, or there is some
5 instrumental use of a TV program that they're seeking.

6 Q Wouldn't viewing studies show, however, if
7 viewers watched the same program week in and week out?
8 Couldn't you infer from that that they were watching
9 it because they wanted to, not that they just happened
10 to turn on the TV that same time every week?

11 A I mean, I think there's a -- yeah. I
12 mean, clearly, when you turn a TV on, I think people
13 do it for a reason, and the uses and gratifications
14 research tries to understand what that reason is.

15 A lot of the TV viewing research, in fact,
16 shows that people turn a TV on and it's a secondary
17 activity. They do other things. They cook, they
18 iron, they read the newspaper. So the TV could be on
19 for hours and hours and hours and they might not even
20 be paying attention to what's on the TV. And that
21 kind of content, whatever it is, is the social
22 presence of the TV. They hear voices, they hear
23 sounds, that's what they like. That could be the
24 gratification they're seeking from TV in that case --
25 the ritualistic viewing pattern.

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1 And, again, the instrumental viewing
2 pattern is they're attending to the content, and
3 attention to the content is a much stronger prediction
4 of satisfaction and intensity of preference of the
5 program than just having a TV on per se.

6 Q Okay.

7 ARBITRATOR WERTHEIM: Could you relate
8 what you've just told us to your testimony earlier
9 this morning that subscriber preferences are generally
10 the same as viewer avidity or intensity?

11 THE WITNESS: Sure. From a survey
12 research perspective, you have something you're trying
13 to measure, and in this case you can use different
14 words that semantically there could be some
15 variability. But essentially, the point of avidity
16 preference is -- and satisfaction is there is
17 something positive -- people have a positive
18 predisposition to certain kinds of content.

19 And whatever word you use you -- an
20 avidity to scale -- higher avidity/lower avidity. You
21 can present that to somebody that might not know what
22 you're talking about. Do you like this program a lot?
23 A little? Not so much? Or do you not like it? So
24 you could pick different semantic terminology to
25 represent to the respondent to collect their -- to

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1 collect an impression. But generally, avidity is
2 something that is more favorable, more intensely
3 preferred by subscribers.

4 ARBITRATOR WERTHEIM: So you're referring,
5 then, to subscriber preferences as only relating to
6 what you might call appointment viewing?

7 THE WITNESS: Well, not -- appointment TV
8 would be a subset of a preference. It may be that --
9 that they know there's a certain kind of programming
10 on. They may not know that it's a specific program
11 with a specific person. That's certainly one kind of
12 instrumental viewing. But this notion of appointment
13 TV is a subset of, generally, the notion that "I'm
14 going to find out what's on, and then I'm going to
15 watch TV."

16 So you may come home from work, for
17 example, and say, "I wonder what's on TV," and you go
18 through the TV Guide or the TV listings and find a
19 specific program that's interesting to you that you
20 might not have known was there until you read the
21 listing guide. And then you turn the TV on to watch
22 that. Instrumental viewing is very much associated
23 with previewing behaviors like looking up content
24 guides of one sort or another.

25 CHAIRPERSON JIGANTI: Mr. Ducey, you --

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1 did you have another question?

2 ARBITRATOR WERTHEIM: No, thanks.

3 CHAIRPERSON JIGANTI: You make a statement
4 here on page 6 that evidence about subscriber viewing
5 -- and this is the portion I am interested in -- does
6 not even provide evidence of avidity?

7 THE WITNESS: Right.

8 CHAIRPERSON JIGANTI: It has no value in
9 showing avidity?

10 THE WITNESS: If you do -- though that may
11 be -- may be an overstatement, but if you look at how
12 long the TV is on in a household, it's a poor
13 predictor of avidity. If you take two people, one
14 person is a heavy viewer, they watch 40 hours a week
15 of TV or more, and another person watches maybe five
16 hours a week of TV, you can't make a conclusion that
17 the person that is watching 40 hours is a more avid
18 viewer than a person that's watching only five hours.
19 That's what I mean by this statement.

20 In fact, the research shows that the
21 person that watches only five hours is actually more
22 likely to be more avid about the TV programming
23 content that he or she watches. So that's -- that's
24 the point I'm trying to illustrate with that statement
25 there. And, in fact, I mean, out of a range of

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1 individuals, there may, in fact, be one person that
2 watches 40 hours that actually is more avid than one
3 person who watches only five hours a week.

4 But the general case is that the more you
5 watch, the less likely you are to be an avid viewer,
6 the more ritualistic you are in terms of your viewing.

7 BY MR. LANE:

8 Q But ratings would show you that particular
9 programs have a much larger audience than other
10 programs, correct?

11 A That's what they are intended to serve,
12 yes.

13 Q And programs come on generally at the same
14 time every day if they're a strip program, or every
15 week if they're a weekly program. They don't come on
16 at random, do they?

17 A Sometimes they seem to. But generally,
18 you're correct, that there's a -- I mean, that's --
19 ideally, you create a sense of continuity in the minds
20 of the audience, what to expect when in terms of
21 programming.

22 Q Right. And could you just explain what a
23 strip program is?

24 ARBITRATOR WERTHEIM: Mr. Garrett, I was
25 going to suggest that you add strip programs to --

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1 MR. LANE: I'm Mr. Lane, and he is
2 Mr. Garrett.

3 ARBITRATOR WERTHEIM: I know. He is the
4 one who inquired about the glossary.

5 THE WITNESS: Strip program -- explain a
6 strip program.

7 MR. LANE: Yes.

8 THE WITNESS: A strip program is -- a TV
9 station would acquire rights to a program, a
10 syndicated program for example, say a game show. And
11 they would run that program Monday through Friday at
12 the same time. In other words, in a strip across that
13 day part, say like at 7:00 at night. So every night
14 at 7:00 Wheel of Fortune might be on, and so viewers
15 expect that, and then that show might develop a
16 following.

17 BY MR. LANE:

18 Q Would that following be evidence of
19 avidity?

20 A It depends upon the character of the
21 viewing. There are some types of viewers that are
22 instrumental viewers, and one thing that they'll look
23 for is some excitement. And so if some fraction of
24 the viewing audience might find Wheel of Fortune
25 exciting somehow, and if they tune to that program

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1 specifically to be excited, that would be an example
2 of instrumental viewing, yes.

3 Other viewers -- again, 7:00 is when they
4 get home from work, and they turn the TV on, and it's
5 more of a habit. So it's Wheel of Fortune is a habit,
6 but it's -- you know, it's important enough to turn
7 the TV on and stay tuned to that channel, but it's not
8 as important as it is to another type of viewer.

9 ARBITRATOR WERTHEIM: Is your distinction
10 basically that between the person who is actually
11 watching what's on and the person who is not and is
12 walking around and doing something else, or reading
13 the newspaper?

14 THE WITNESS: One of the best predictors
15 of more avidity, stronger preference, stronger
16 satisfaction, is attention to the programming.
17 Exactly right. And again, it's --

18 ARBITRATOR WERTHEIM: Well, I guess what
19 I'm asking is does this distinction relate to anything
20 more than that?

21 THE WITNESS: More -- I'm sorry. More
22 than --

23 ARBITRATOR WERTHEIM: Your distinction
24 between ritualistic and instrumental viewing.

25 THE WITNESS: Right.

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1 ARBITRATOR WERTHEIM: Is that any more
2 than a distinction between people who are actually
3 watching what's on and who just have it on and they
4 aren't even paying any attention to it?

5 THE WITNESS: Yes, it is more than
6 attention. Attention is one element of instrumental
7 -- to characterize an instrumental viewer. There is
8 -- they're paying attention. The more somebody pays
9 attention the more likely they are to be an
10 instrumental viewer. And the other factors that they
11 -- create this composite personality of an
12 instrumental viewer are typically in the research,
13 again, they are looking for information. They are
14 information-seeking. They have an expectation, they
15 have a goal, and they want to get informed. And
16 that's a --

17 ARBITRATOR WERTHEIM: As distinct from
18 being entertained?

19 THE WITNESS: And to be entertained. I
20 mean, if they are attending to the content and they
21 want to be entertained, that's an active psychological
22 drive. That would then fall into the instrumental
23 kind of viewer profile.

24 A lot of TV that gets measured in the
25 ratings process is TV where the set is on but it's a

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1 secondary activity. People are doing other things,
2 such that they aren't paying attention. And so why is
3 the TV on if they're not paying attention? The way
4 people work it's on because they like having it on,
5 they like the noise, they like the background, it's a
6 habit. I mean, they're not really engaged very much
7 psychologically with it, and so it's --

8 ARBITRATOR WERTHEIM: Would you say that
9 survey research is a good way to measure this, because
10 we can attach meters to TV sets but not to people's
11 eyeballs?

12 (Laughter.)

13 THE WITNESS: Well, yes. In effect,
14 actually, there is some academic research where they
15 essentially do attach meters to eyeballs. It tracks
16 eye movement across a TV screen, or else -- so there
17 are actually physiological measures of what's called
18 eyes on screen, and the -- that those measures of eyes
19 on the screen are then related to measures of program
20 satisfaction and learning, what you're getting out of
21 the program, and, in fact, eyes on the screen -- a
22 measure of attention. That doesn't measure what's
23 happening psychologically, but at least it measures
24 what they're looking at, again as a predictor of --

25 ARBITRATOR WERTHEIM: You can have your

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1 eyes on the screen and still be like this.

2 (Laughter.)

3 THE WITNESS: Exactly. Exactly.

4 MR. GARRETT: The numbers were higher when
5 they were launching the strip show.

6 (Laughter.)

7 ARBITRATOR FARMAKIDES: Let me ask,
8 please, when you do this type of research, what kind
9 of universe are you talking about, size-wise?

10 THE WITNESS: Oh. Size of the universe or
11 size of the --

12 ARBITRATOR FARMAKIDES: Yes, size of the
13 universe.

14 THE WITNESS: Well, it depends upon what
15 the sample is. Do you mean the size of the sample or
16 the size of the --

17 ARBITRATOR FARMAKIDES: All right. Size
18 of the sample then.

19 THE WITNESS: Okay. The universe is the
20 large group to which you're going to generalize when
21 you draw a sample. So the size of the universe
22 varies. For example, a lot of academic research is
23 done with college students, and the size -- to be
24 technical just for a moment, the size of the universe
25 if you're at the University of Maryland and you draw

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1 a sample of students from that college population, the
2 size of the universe in that case is the student
3 population at the University of Maryland.

4 The size of a sample is, for survey
5 research, it depends upon the specific purposes you're
6 drawing that sample for and what elements of the
7 sample you're going to analyze. But there are --
8 there are some statistical equations that you can use.
9 For typical survey research, something in the range of
10 several hundred to over a thousand, up to 1,500 or so,
11 is adequate from a statistical perspective to estimate
12 from that sample what is going on in the large
13 universe from which it's drawn.

14 ARBITRATOR FARMAKIDES: When I was using
15 the word "universe," I was thinking of a sample.

16 THE WITNESS: Okay. Sure.

17 ARBITRATOR FARMAKIDES: Now, with respect
18 to the observations that you made a moment ago, what
19 was the size of this sample that you researched?

20 THE WITNESS: Of the different studies I
21 was talking about?

22 ARBITRATOR FARMAKIDES: Yes.

23 THE WITNESS: I don't know specifically,
24 but probably on the order of -- for the academic
25 research, typically it's several hundreds, 500 or so

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1 maybe. Sometimes a couple hundred, three hundred.

2 ARBITRATOR FARMAKIDES: Do you feel that
3 is sufficient for you to make the generalization that
4 you did make?

5 THE WITNESS: Yes. In the -- what factors
6 into making a generalization is there are several
7 different things. One is how different the parent
8 population is. Essentially, what you're doing is
9 you're taking a blood sample from a body. And if the
10 blood circulating in your body is pretty much the same
11 everywhere, you could take a very tiny sample. You
12 wouldn't need to take a gallon out of somebody to
13 figure out what's going on with their blood. You
14 could take a very tiny sample because that blood is
15 pretty similar -- homogeneous -- throughout the rest
16 of the body.

17 And if you're drawing a sample of a
18 college population, there is some variability in
19 there, and the greater the variability the larger
20 you'd want that sample to be. But it also depends
21 upon what characteristic you're measuring.

22 So if you're measuring eye color, for
23 example, there is not that much variability in the
24 population, so you could take a relatively small
25 sample to estimate proportions of how often blue eyes

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1 occur in the parent population. So that's an example
2 of a couple of the kinds of things that go into how
3 big is enough in a sample.

4 I think it's a little bit confusing.
5 Intuitively, you would think the bigger the sample the
6 better the results are. But, in fact, that's not the
7 case. After you get to a certain size for a sample
8 from a statistical perspective, you don't get -- you
9 don't get the -- there's a diminishing curve. You
10 don't get the payback. So if you do sample survey
11 research with larger than a thousand members of the
12 sample, you can spend your money and have ten thousand
13 people in a sample, but you're not going to improve
14 the statistical precision of your estimates very much.

15 So, again, it depends upon the specific
16 case. But generally, that's -- that's a fine range to
17 work with in terms of survey research.

18 ARBITRATOR FARMAKIDES: Thank you.

19 BY MR. LANE:

20 Q Mr. Ducey, are you saying that a program
21 that gathers a very large audience week in and week
22 out from the ratings is less avidly viewed than a
23 program that gathers a very small audience week in and
24 week out?

25 A Well, as a general statement, that's what

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1 the uses and gratification literature tends to
2 support. But again, there's the distribution of
3 viewer types. So some of the viewers to that program
4 could be very instrumental viewers and be -- they
5 would be avid viewers of that program, depending upon
6 why they're watching the program, the circumstances of
7 it.

8 As a general proposition, as I was saying
9 earlier to one of the members of the panel, sheer
10 volume of viewing, in terms of ratings, isn't a good
11 predictor of how avid of a viewer you will be.
12 However, in a large program audience, a highly rated
13 program, there will be a collection of avid viewers
14 and less avid viewers. There will be a collection of
15 instrumental viewers and of ritualistic viewers.

16 ARBITRATOR WERTHEIM: If you had a program
17 with a rating of, let's say, 15, and another with a
18 rating of one, and that occurred regularly week after
19 week, wouldn't it be likely that the higher rated
20 program would have a larger number and perhaps even a
21 larger percentage of avid viewers?

22 THE WITNESS: I would say yes to the first
23 question, the higher number, but not necessarily the
24 higher percentage. Just by sheer volume, by having a
25 higher rating, it collects more viewers. And so just

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1 on an absolute basis, you're more like to have more
2 avid viewers in that collection. But the percentage
3 of avid viewers to that program versus another program
4 type doesn't necessarily -- you can't infer that. In
5 fact --

6 ARBITRATOR WERTHEIM: Are you suggesting
7 that a ritualistic viewer might just habitually turn
8 on the Cubs for three hours every night for several
9 months out of the year?

10 THE WITNESS: That's possible. But again,
11 the research and the academic literature suggests that
12 certain program types tend to be more instrumental --
13 attract more instrumental viewers than other program
14 types. News information/magazine kinds of talk shows,
15 perhaps sports shows would tend to attract more
16 instrumental viewers, and other kinds of program
17 content would attract, on a relative basis, more
18 ritualistic viewers.

19 ARBITRATOR FARMAKIDES: So are you saying
20 that with respect to any program the percentage of
21 ritualistic to the instrumental types is roughly the same?

22 THE WITNESS: No. No. In fact, it varies
23 by content, very specifically. So if you were to do
24 a bar chart of how many were instrumental and how many
25 were ritualistic, as you move across the content

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1 categories that we have in this proceeding, according
2 to the academic research when you go to programming
3 like news magazine shows, talk shows, discussion
4 shows, the fraction of instrumental viewers in that
5 program audience is higher than ritualistic viewers.

6 If you move to different kinds of program
7 content, those bars shift. But it is as a function of
8 the program content.

9 ARBITRATOR WERTHEIM: Have there been such
10 studies that attempts to measure the portion of avid
11 viewers by program categories we're considering here?

12 THE WITNESS: Not that I'm aware of, other
13 than not -- not as a function of viewing. But studies
14 we have in evidence here are the -- from a viewer
15 perspective, the ELRA viewer study, which doesn't
16 measure viewing. It just measures valuation. It
17 measures that avidity, but it doesn't compare viewing.
18 The only place --

19 ARBITRATOR WERTHEIM: Where are those
20 studies at?

21 THE WITNESS: In exhibits -- well, the
22 graph is in Exhibit 1, the comparison between avidity
23 and viewer. This is not within the same sample. This
24 is a comparison of different kinds of studies. But
25 that color chart of the different kinds of measures

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1 that might be used to consider this, if you look at it
2 -- I was talking about the different bars going up and
3 down, and in a sense that's exactly what this exhibit
4 shows.

5 If you look over at the far right group,
6 the station-produced programs in this exhibit, you can
7 see that for subscribers the bar on the far right,
8 that's higher than the bar on the left of that group
9 of four bars, which is viewing. So in this case, the
10 avidity bar is high for station programming as rated
11 by subscribers, which also that's the case for the
12 cable operator valuation, those two studies, and the
13 viewing bar is low.

14 So, in other words, for station-produced
15 programming, high on avidity, low on viewing. If you
16 go, as the extreme case on the far left side,
17 syndicated series, the viewing bar is way high. But
18 subscriber evaluation bar, the measure of avidity, is
19 way low. And that -- the bar is moving up and down
20 dynamically, and it moves across the program content
21 categories.

22 BY MR. LANE:

23 Q You've been talking about viewer avidity,
24 is that correct?

25 A That's in response to your questions, yes.

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1 Q Have I had any questions in the last 20
2 minutes?

3 (Laughter.)

4 Ratings, though, don't they -- wouldn't
5 they measure -- isn't there something different,
6 avidity to particular programs?

7 A Are you asking does avidity vary as a
8 function of program content?

9 Q No, I'm not asking that. I'm asking,
10 might there be avidity to particular programs, not
11 program content?

12 A Oh, yes, I think so.

13 Q And would ratings measure that?

14 A No.

15 Q No? Why not? If you -- if the example in
16 Judge Wertheim's -- take that example. You have one
17 show that gets a 15 rating week in and week out, and
18 you have another show that gets a one rating week in
19 and week out. Isn't there an avidity to the first
20 program as you see there?

21 A There is -- there could be some relation,
22 some statistical correlation between ratings and
23 avidity. I mean, if you were to, again, look at this
24 -- this one exhibit here, I think the question you're
25 asking is because you have a measure of valuation and

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1 a measure of viewing on these bars correlated. Does
2 one predict the other?

3 And, I mean, in this example, viewing is
4 -- is relatively lower. Avidity is relatively higher.
5 So you're asking, can you use viewing to predict
6 avidity? Or you can come to the opposite conclusion
7 over here. There's a lot of viewing but lower
8 avidity. So based upon the evidence in this
9 proceeding, I don't really come to that same
10 conclusion you are suggesting.

11 And based on the academic research that
12 I'm familiar with, it doesn't really seem to support
13 that. In fact, it says the more you view, again as
14 I've said, the more ritualistic you tend to be as a
15 television viewer, which is not associated with
16 avidity.

17 Q But this isn't -- ratings aren't about the
18 more you view. They're about more viewers watching
19 particular programs, aren't they?

20 A Yes.

21 Q I mean, you can't tell when you look at a
22 particular program's ratings whether that person has
23 been watching programs for eight or nine hours, or for
24 a half an hour, can you?

25 A Correct.

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1 Q You're just looking at that particular
2 program.

3 A Correct.

4 Q So is there a different kind of avidity to
5 programs from just -- as I understand it, you're just
6 saying there are different types of viewers, and you
7 either fall into an instrumental viewer or whatever
8 the other term is -- a passive viewer. Is that
9 correct? Is that what you're saying? There are
10 different types of viewers?

11 A Yes.

12 Q Okay. But a passive viewer could easily
13 put -- he or she not become involved in a particular
14 program and become an instrumental viewer for that
15 particular program, and then maybe move to passive
16 viewing again?

17 A That's correct.

18 Q Okay. And have you measured that anywhere
19 here?

20 A In the academic research, for example, I
21 mean your viewing style -- you may have a predominant
22 viewing style. There are those kind of people that
23 just tend to watch TV a lot, and so they would be
24 typically a ritualistic viewer. However, even that
25 person may well watch the news to get informed. So

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1 it's not a black or white psychological profile. I
2 mean, the way people work is there is plenty of gray
3 area.

4 So some times of the day, some times of
5 the week you come home and you're tired, and you don't
6 really want to deal with intellectual stimulation.
7 You turn the TV on and grab a drink, and just, you
8 know, couch potato. And other times you're more of a
9 couch commando. I mean, you are looking for specific
10 things and you want to go attack that information or
11 that excitement, whatever the instrumental use is
12 you're pursuing.

13 ARBITRATOR WERTHEIM: Maybe if you include
14 that in your glossary.

15 (Laughter.)

16 BY MR. LANE:

17 Q Let's turn over to page 11 of your
18 testimony.

19 A Okay.

20 Q Turning to the first quote that appears on
21 that page, it refers, does it not, to exciting
22 entertainment?

23 A Yes, it does.

24 Q And so you can have instrumental viewing
25 that is related to entertainment programs, correct?

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1 A Sure. Exciting, in this case, refers to
2 the psychological drive of the viewer and not
3 necessarily a third party valuation of the content.
4 It's entertainment that they -- that the viewer would
5 find exciting, and that --

6 Q Right.

7 A -- would be an example of an instrumental
8 use, yes.

9 Q But I was referring to the entertainment
10 part.

11 A Yeah. I mean, if -- well, the exciting is
12 an attribute of the viewer. They want to watch this
13 content because it excites them, and different things
14 excite different people. Reading -- reading the stock
15 page in The Wall Street Journal is exciting to some
16 people. To other people, it's boring. So the
17 excitement is an attribute of the person, not of the
18 content.

19 Q Now, in the second quote in the -- on that
20 page, at the bottom of the page, there is an
21 indication, is there not, that instrumental use
22 typically correlates with news talk and magazine types
23 of program viewing, correct?

24 A Correct.

25 Q And as we've seen, some of the news

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1 programs on distant signal, particularly the news
2 programs on WTBS, are syndicated programs, correct?

3 A Correct.

4 Q And talk shows are generally syndicated,
5 certainly the largest talk shows, if we just went down
6 the list, they are all syndicated, right?

7 A Largest in terms of ratings I would think,
8 yes.

9 Q And there are a lot of syndicated magazine
10 type programs, are there not?

11 A Yes.

12 Q Now, you indicated I believe yesterday
13 that most of this research is -- relates to news
14 programs, is that --

15 A In uses and gratifications?

16 Q Yes.

17 A That's my -- my knowledge of that
18 research, is that a large amount of it relates to news
19 programming.

20 ARBITRATOR WERTHEIM: That's because the
21 people who pay for the research are interested in that
22 -- in what the results will be for news?

23 THE WITNESS: Well, it's actually the
24 academic research is -- is typically funded by
25 universities or research grants of one sort of

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1 another, and not necessarily funded by TV stations or
2 somebody else. It's just that's -- if you're trying
3 to look at -- academics are attracted to news
4 viewership for one reason or another, so that tends to
5 be one kind of programming they study a lot. Another
6 kind that --

7 ARBITRATOR WERTHEIM: Well, the point I'm
8 asking -- I'm actually an avid sports fan, so I -- is
9 that equally covered by --

10 THE WITNESS: I'm not sure. And soap
11 operas is another kind of category that has attracted
12 some researcher attention. But I'm not -- I'm not
13 aware of studies that specialize in other kinds of
14 content. I'm sure there are some -- some sports
15 studies. I just might not know about those.

16 ARBITRATOR WERTHEIM: You're saying that,
17 if I understand you correctly, that this type of
18 research asks questions that are designed to elicit
19 responses concerning viewer interest in news magazine
20 and so on, and does not ask questions that are
21 designed to elicit the responses with respect to the
22 other types of programming we're considering here.

23 THE WITNESS: Typically, in these kinds of
24 studies, there will be some measures of what -- what
25 kinds of programming people watch. And then -- I

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1 mean, to be able to come to the conclusion that
2 viewers of news programs tend to be, as a group, more
3 instrumental, then we'll ask everybody what kinds of
4 programming you watch.

5 ARBITRATOR WERTHEIM: More instrumental
6 than what?

7 THE WITNESS: Exactly. And so in that
8 same study, they will ask other kinds of content that
9 people watch and associate those people with more
10 ritualistic viewing. So the studies would cover a
11 range of different kinds of content.

12 The way that the studies get written up
13 tend to focus on the quote/unquote "exciting part of
14 it," which is this instrumental viewership of news
15 programming. But, in fact, these same studies also
16 collect data about the ritualistic viewing to other
17 kinds of program content. It's just that the
18 researchers writing up the articles wanted to focus on
19 what they thought to be an exciting finding -- the
20 discovery of this instrumental avid-type viewer, and
21 what kind of content they tend to watch.

22 BY MR. LANE:

23 Q Now, are the -- why did you pick the
24 articles that you picked to include in your testimony?
25 How did you pick it from this large body of research?

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1 A Oh, those are some of the -- some of the
2 leading researchers, in some cases, and in other cases
3 because the nature of that research seemed to be
4 thematically related to what we're considering in this
5 proceeding.

6 Q And the other articles didn't seem to be
7 related to what we were considering in this
8 proceeding?

9 A From my knowledge of the literature, these
10 are the ones that have always impressed me as sort of
11 leading articles in the field. But there is lots and
12 lots of such articles. I'm just -- I don't know. We
13 can pick a few to represent what seems to be the
14 findings.

15 In academic research, you do a study and
16 you do a literature review and you compare what other
17 people have done, and then you try to add something to
18 it. So even if it's like one study, typically then
19 you'll see in these articles that they do a literature
20 review, and their whole research design and their
21 conclusions are placed within the context of all of
22 the studies that have gone before, and that's part of
23 the social scientific method.

24 So even though this is only a handful of
25 studies, it's actually building upon a whole body of

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1 knowledge that many previous researchers have -- have
2 helped create.

3 Q Could we turn to page 13 of your
4 testimony?

5 A Okay.

6 Q And this is in that first full paragraph
7 on that page. This is where you talk about the
8 formation of special relationships with the presenters
9 of television newscasts.

10 A Yes.

11 Q Is the formation of these types of special
12 relationships limited to presenters of television
13 newscasts?

14 A No.

15 Q And it's true, is it not, that there are
16 many large fan clubs of syndicated series around the
17 country?

18 A I don't know specifically if that's -- I
19 mean, it could be true. I don't know.

20 Q You never heard of anything about Star
21 Trek Trekkies?

22 A Star Trek I've heard of, yes, but I
23 wouldn't generalize --

24 Q But I mean of the fan clubs for that? The
25 fan club --

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1 A Yes.

2 Q -- for Star Trek?

3 A Fan club for Star Trek, yes, that would be
4 one such instance I know of.

5 Q And one of the programs you present, you
6 present -- you didn't present but you were going to
7 present was something called Hershey's (sic)
8 Hollywood?

9 A Hersey's Hollywood.

10 Q Hersey's. And what kind of a program is
11 that?

12 A It deals -- well, it deals with Hollywood.

13 Q Right.

14 A Not surprisingly.

15 Q Right.

16 A Actors, actresses, movies.

17 Q People that are on syndicated series?

18 A I suppose, yes.

19 Q So there is enough of an interest to have
20 a program about those people that people are
21 interested in watching, and you think it was important
22 enough to include in your evidence, correct?

23 A Yes.

24 Q And another program to which you refer --
25 I keep forgetting which -- which exhibit did you have

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1 the WSBK in?

2 A I think that was --

3 Q Oh, that's Exhibit 3, the last page.

4 A Right.

5 Q Another one of the programs was Cheers to
6 Boston. Do you see that?

7 A Yes.

8 Q And what is the Cheers -- to what does the
9 Cheers in that refer?

10 A The TV program Cheers.

11 Q The syndicated series Cheers, correct?

12 A Actually, I'm not sure if that's the
13 network run or the syndicated run that it's referring
14 to here.

15 Q But it's one in the same program, right?
16 It's just --

17 A Its status as network program versus
18 syndicated program I'm not sure about, but it's the
19 same program we're talking about, right.

20 Q And those -- the people in Boston relate
21 to Cheers, do they not?

22 A Some of the people do, sure.

23 Q And that would be the same type of special
24 relationship that -- to which you are referring?

25 A In terms of instrumental use or parasocial?

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1 Q In terms of how you're using those words
2 on page 13 of your testimony.

3 A Well, the way you've asked the question,
4 I guess I would have to answer no, because the way I
5 use the words in my testimony that's specifically
6 framed in the context of the relationship viewers have
7 with news.

8 Q But they have that -- the same type of
9 special relationship with stars in other programs,
10 syndicated series in particular.

11 A Well, the syndicated series in particular
12 I don't know for a fact. But the more general point
13 of your question, do people have parasocial
14 interactions with people appearing in programs beyond
15 news programs, my answer to that question would be
16 yes.

17 ARBITRATOR WERTHEIM: Dr. Ducey, would it
18 be correct to understand your testimony on the
19 parasocial interaction, and the instrumental and
20 ritualistic viewing, as evidence that there is some
21 substantial proportion of avid viewers among viewers
22 of news programs, talk shows, and the like, but that
23 you have not made any effort to compare that
24 proportion, whatever it might be, with the proportion
25 of avid viewers for sports or movies or syndicated

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1 series, or anything else in particular?

2 THE WITNESS: Right. My main objective
3 here was to demonstrate avidity for news programs as
4 the kind of station-produced programs.

5 ARBITRATOR WERTHEIM: Thank you.

6 CHAIRPERSON JIGANTI: Do you do that
7 somewhat reluctantly, in the sense that you don't
8 think it should be a factor in the calculation of
9 avidity?

10 THE WITNESS: Avidity?

11 CHAIRPERSON JIGANTI: Yes.

12 THE WITNESS: No. I think avidity should
13 be a factor.

14 CHAIRPERSON JIGANTI: Because it was in
15 the '89 report?

16 THE WITNESS: Right. Well, this is
17 specifically in response -- it's specifically in
18 response to previous tribunal reasoning. But --

19 CHAIRPERSON JIGANTI: You disagree with
20 their reasoning?

21 THE WITNESS: Yes. I mean, essentially,
22 the -- the most direct measure of all of this that we
23 have available is the cable operator's valuation.
24 That's the most direct measure. The material in here
25 about the academic research and the industry research

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1 with respect to program liking, program element
2 liking, is specifically to respond to an area that the
3 tribunal is interested in.

4 In terms of absolute proportion of viewers
5 within the total viewership of a program, whether it's
6 a news program or Hersey's Hollywood, or some other
7 kind of program, the proportion of those viewers that
8 are instrumental versus ritual -- ritualistic across
9 program types, I am not aware of any research that has
10 done that so systematically, but perhaps we're
11 creating a market for such academic research here.

12 (Laughter.)

13 CHAIRPERSON JIGANTI: This would be a good
14 time to take a recess. We'll take a little bit longer
15 than usual. We'll take a 15-minute recess.

16 MR. STEWART: Mr. Chairman, might I say
17 one thing to clarify the record?

18 CHAIRPERSON JIGANTI: Yes.

19 MR. STEWART: I didn't want to interrupt
20 Mr. Lane's line of cross here, but he began by stating
21 to Dr. Ducey that Hersey's Hollywood was a program
22 that he was going to show but didn't and that's not
23 accurate. His testimony was that he showed a
24 videotape from that program in the 1989 proceeding,
25 and that videotape has been incorporated into the

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1 evidence here and is in the record if you want to
2 review it.

3 CHAIRPERSON JIGANTI: We'll take a 15-
4 minute recess.

5 (Whereupon, the proceedings were off the
6 record from 10:43 a.m. until 11:07 a.m.)

7 CHAIRPERSON JIGANTI: Why are we always
8 trying to proceed without you, Mr. Lane?

9 MR. LANE: You want to get it finished,
10 and I'm the only one asking questions.

11 (Laughter.)

12 CHAIRPERSON JIGANTI: Our delay on our
13 part was a working delay.

14 ARBITRATOR WERTHEIM: Before we resume,
15 I'd like to say that with respect to my question to
16 the witness about any reason why Form 3 doesn't
17 include a breakdown of distant signals by program
18 category, I think I have finally figured out why that
19 information wouldn't be as helpful as I had assumed it
20 might be, and I want to give my understanding, just to
21 state it and see if counsel have any comments, if we
22 can do that without being too long.

23 It seemed to me that -- first to be an
24 enormous burden in trying to collect such information,
25 because all of the channels configure a mix of

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1 programming. But even if somehow that could be
2 overcome, the resulting information wouldn't get very
3 far, because it would not include any way of assigning
4 value to particular types of programming. An operator
5 might pay, you know, a dollar more for the Chicago
6 Cubs than he'd pay for I Love Lucy, and we'd still
7 have to figure out what weight to attach to all of
8 these things. So the burden of reporting that
9 information probably wouldn't be worth its value.

10 I'd be glad to hear anyone's comment on
11 that view of the situation.

12 MR. LANE: My only comment would be I
13 would be afraid the fund would be gone because we
14 would be spending money trying to influence the cable
15 operators of what to put on there.

16 MR. STEWART: Mr. Lane would have to visit
17 12,000 systems every six months to --

18 (Laughter.)

19 -- and I think that there was testimony in
20 the record from Mr. Bortz about the disassociation of
21 the royalty payments from the program valuations,
22 because there is a risk if you do allow the
23 association to have cable operators responding in that
24 context, in a way that they think is going to benefit
25 them in terms of how much royalties they --

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1 ARBITRATOR WERTHEIM: You might get biased
2 reports --

3 MR. STEWART: Yes. That's a --

4 ARBITRATOR WERTHEIM: -- and various
5 direction.

6 MR. LANE: Well, actually, Judge Wertheim,
7 the tribunal in what was the first rate adjustment
8 proceeding actually did do an operator survey of how
9 much they paid. I don't remember exactly. Wasn't it
10 how much they paid each month? And there was some
11 information like that, and I think it -- and then
12 there was, indeed, an inflation adjustment and the
13 rates went up, and I think that sort of scared the
14 cable industry from ever giving any information that
15 would be used by this panel again for rate purposes.

16 So there was actually, in 1980, a survey
17 of cable operators, but it wasn't what you asked,
18 which was a different question. It was, how much are
19 your rates now? Do you plan to increase that? What
20 kind of impact do local franchise authorities have on
21 your rate making? Those types of questions.

22 MR. GARRETT: I think, Your Honor, that
23 there is a problem with the administration of a survey
24 like that, as my two colleagues have identified.
25 There is also a conceptual issue that it raises, which

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1 I think you alluded to as well, and which has some
2 history like in these proceedings for that, and very
3 different views that parties take about whether an
4 hour on at prime time is worth an hour on at 3:00
5 a.m., things of that nature.

6 ARBITRATOR WERTHEIM: I've just been
7 groping for some way of getting a direct measurement
8 of what operators actually did, rather than asking
9 theoretical questions about what would you do.

10 MR. GARRETT: We've all kind of groped for
11 a long time here.

12 (Laughter.)

13 ARBITRATOR WERTHEIM: Right.

14 MR. LANE: I think what Bob is referring
15 to, that you may see in the early decisions, and I
16 think there was an allusion -- maybe, John, yesterday
17 in your opening -- to the time plus fee generated
18 approach, and that --

19 ARBITRATOR WERTHEIM: And yesterday was
20 the first time I had some inclination of what that
21 meant, because I haven't seen it in any of the
22 recent --

23 MR. LANE: Right, because it was -- it was
24 quickly beaten down by all of the parties, I think.

25 MR. GARRETT: I think the fair thing to

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1 say is that we've all sort of structured our cases in
2 a way, given certain assumptions of what has already
3 taken place, and we --

4 ARBITRATOR WERTHEIM: Even harm and
5 benefit have kind of been not decided. Everybody
6 focuses on an operator survey versus Nielsen viewing
7 data, which is what the whole thing seems to be
8 focusing on so far.

9 MR. STEWART: One other change that has
10 occurred is that back in the '70s there were reports
11 filed, mandatory reports filed by stations and the FCC
12 that described their programming and the amounts and
13 different kinds of programming, and that was a
14 database that could be referred to, and that had some
15 validity because it was filed pursuant to law that
16 doesn't exist anymore. And there are other
17 difficulties in collecting that kind of information at
18 this point.

19 CHAIRPERSON JIGANTI: With that, I think
20 we can proceed back. Mr. Lane and Mr. Ducey?

21 CROSS EXAMINATION

22 BY MR. LANE:

23 Q Mr. Ducey, could you turn to page 7 of
24 your testimony, please?

25 A Okay.

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1 Q Now, what is the first full paragraph on
2 this page intended to mean?

3 A It is describing the incentive for cable
4 operators under different circumstances and for
5 advertisers. Ratings are relevant to revenues when
6 advertising is a relevant factor, and in other cases
7 subscriber revenues -- the revenues would come from
8 subscribers -- in which case ratings are a factor.

9 Q Now, if a cable system started from zero,
10 is that what you -- are you describing a startup cable
11 system in this paragraph?

12 A The notion of newness refers to addition
13 of a channel, if a new station or channel was added,
14 not necessarily --

15 Q I understand that. But --

16 A -- not necessarily a new cable system. So
17 if it's an existing -- if it's a going concern --

18 Q That's my question. Are you just
19 describing a going concern situation, or are you
20 describing --

21 A I didn't restrict it to that. I was just
22 talking about the general cable system.

23 Q Well, would this work for a startup cable
24 system if it attracted one percent of all of the
25 potential subscribers?

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1 A The content I describe there is one
2 percent more in --

3 Q More than zero is what I wanted to talk
4 about.

5 A Well, I think the intent of your question
6 is -- I'm assuming you're asking a revenue question,
7 since that's what I'm talking about --

8 Q Right.

9 A -- in this paragraph that you've referred
10 me to. The cable operator has the incentive to
11 maximize revenues, controlling for cost; profitability
12 is the target. So if -- whether you're a startup
13 cable system, you walk in with the keys and open the
14 door and today is day one, or you've been in business
15 for 30 years, you have the same objective, which is to
16 maximize profitability.

17 If you have a certain number of signals
18 your system can carry -- on an average, that's
19 something over 30 signals -- the cable operator has
20 the incentive economically to pick the correct signal
21 complement that would maximize money coming in from
22 the subscribers, while controlling for cost.

23 So if you have 50 percent of the
24 households your system passes sign up as subscribers,
25 because of a certain lineup of channels that you have,

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1 and you add yet one more channel, you have a choice of
2 yet one more channel to add before you saturate your
3 system in terms of capacity of channels. That's what
4 I'm talking about here.

5 So if you have a choice between two
6 different channels, and one channel will add one more
7 percent of subscribers to your subscriber base, and
8 the other channel doesn't, you'd go with the channel
9 that adds one more percent of subscribers.

10 Q But you're already assuming in that answer
11 that you have a 50 percent base.

12 A The context in my mind when I wrote this
13 article was -- this paragraph was -- and if you
14 started from zero, the objective is -- with each --
15 it's an incremental function. So if you're talking
16 about the first channel, to walk in a door and it's
17 day one, and my objective as the cable operator having
18 started up this cable system is to maximize subscriber
19 revenue with the complement of channels, I want to get
20 the largest number of subscribers.

21 And I guess what you're asking now is
22 should the first channel be one that adds one percent
23 of subscribers? If I have a bunch of channels
24 available to me with different costs and different --
25 other implications, the first channel I select would

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1 probably be -- I mean, the eventual target is how many
2 subscribers I get overall. So that's what I'm talking
3 about there.

4 And if you have a startup situation, you
5 still have the same objective as a going concern
6 situation, which is overall to have the greatest
7 number of subscribers.

8 Q Now, when you have the greatest number of
9 subscribers, if you charged nothing for a service,
10 wouldn't that get you the greatest number of
11 subscribers? Wouldn't the simplest way to get the
12 greatest number of subscribers is just charge a low
13 price?

14 A Sure.

15 Q So there must be other factors besides
16 getting the greatest number of subscribers that come
17 into account?

18 A Yeah, of course. As I said before,
19 there's profitability.

20 Q And what, in your mind, are some of those
21 other factors?

22 A Well, as I mentioned yesterday in my
23 direct, and just alluded to at least here, there's
24 revenues and expenses. It's -- the ultimate target is
25 profitability as a business. Cable operations are

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1 businesses, so you want to generate the greatest
2 revenues you can while protecting your business
3 objective of a certain level of profitability.

4 So the other factors would be whatever
5 goes into the expenses, and yesterday I was mentioning
6 some of those factors might be the cost to import a
7 signal on a microwave, for example, or copyright
8 payments. You might not add another signal if you
9 think that incurs a greater than desirable amount of
10 expense to your financial profile.

11 Q At the bottom of the page you refer to
12 some subscriber research. What is that body of
13 research to which you're referring there?

14 A Mostly this is the kind of research that
15 gets described in trade press. That's -- that's
16 mostly how I -- how I become aware of it.

17 There is also -- you know, I was in the
18 trade press. I mean, I have friends that work in the
19 cable industry in different areas, and just being
20 researchers we talk and compare what we do, and so,
21 you know, personal contacts in the cable research and
22 the cable industry with researchers.

23 Q Could you turn to page 9 of your
24 testimony, please?

25 A Okay.

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1 Q Now, you're aware, are you not, that the
2 tribunal in the 1983 final determination did not
3 accept the results of the operator surveys or the
4 subscriber surveys?

5 MR. STEWART: Objection. I don't think
6 that's a correct characterization of the 1983
7 decision.

8 CHAIRPERSON JIGANTI: Overruled. You may
9 inquire.

10 THE WITNESS: I guess I'm not sure of the
11 exact status of the studies with respect to that
12 proceeding.

13 BY MR. LANE:

14 Q Well, has anything changed with regard to
15 the operator surveys or the subscriber surveys or even
16 the viewing study since 1983, since the 1983
17 proceeding?

18 A Well, beyond the passage of time, yeah --
19 I mean, I'm not quite sure where you're headed, but
20 yeah. I mean, time has passed.

21 Q But the studies didn't change, did they?

22 A The results of the studies are the same.
23 I mean, they are -- they were snapshots.

24 Q It was the same study that was taken in 19
25 -- they were all taken in 1985 except for -- well,

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1 they were all taken in 1985, weren't they?

2 MR. GARRETT: I'm going to object to the
3 form of the question. I'm not certain what studies
4 are being compared here over time, and I don't think
5 it's clear from the question that he's asking. We
6 don't want the record confused on this matter.

7 MR. LANE: All right.

8 CHAIRPERSON JIGANTI: Can you clarify your
9 question?

10 MR. LANE: Sure.

11 BY MR. LANE:

12 Q Could you turn to page 8 of Exhibit 2 of
13 -- I guess there are two parts.

14 A Right. There's --

15 Q It's the first -- the one for the cable
16 operator.

17 A Okay.

18 Q Would you read into the record, under 2.3,
19 the next-to-the-last sentence in that paragraph?

20 A "Interviewing took place between April 15,
21 1985, and April 24, 1985."

22 Q And will you turn to page 10 of the
23 subscriber survey that's also contained in Exhibit 2?

24 A Okay.

25 Q And would you read into the record the

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1 first full sentence on that page?

2 A "Interviewing took place between April 12,
3 1985, and April 21, 1985."

4 CHAIRPERSON JIGANTI: Excuse me. I didn't
5 follow --

6 MR. LANE: Page 10 of -- there are
7 actually two, are there not, Mr. Ducey, two portions
8 of Exhibit 2?

9 THE WITNESS: Yes, two studies.

10 MR. LANE: Right.

11 THE WITNESS: Cable operators, cable
12 subscribers.

13 ARBITRATOR WERTHEIM: To which are you
14 referring now?

15 MR. LANE: I'm referring to the one in --
16 for cable subscribers at page 10, the first full
17 sentence.

18 ARBITRATOR WERTHEIM: The first one is the
19 study of the -- the ELRA study for survey of
20 operators. Is that right?

21 MR. LANE: I think that's --

22 ARBITRATOR WERTHEIM: That's not the one
23 you're referring to?

24 BY MR. LANE:

25 Q Aren't they both done -- weren't they both

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1 done by ELRA, Mr. Ducey?

2 A Yes.

3 MR. LANE: So there are two there, Judge
4 Wertheim.

5 CHAIRPERSON JIGANTI: What is the second
6 -- at page 10 you're talking about -- does that say
7 "sample completion, 2.4, sample" --

8 MR. LANE: Exactly, yes.

9 BY MR. LANE:

10 Q Could you read that sentence over again,
11 please, into the record?

12 A Yes. "Interviewing took place between
13 April 12, 1985, and April 21, 1985."

14 Q So that these two studies, although they
15 were about 1983, actually took place in 1985?

16 A Yes.

17 Q And the tribunal expressed concern about
18 that, did they not?

19 A That's my recollection, yes.

20 Q And did you hear Mr. Stewart yesterday
21 indicate that because of that concern that was one
22 reason other studies like this haven't been done, that
23 you're always behind?

24 A Yes.

25 Q And that's an indication, is it not, that

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1 the studies should be done in the year in which you're
2 addressing?

3 A At least according to the tribunal, yes.

4 Q And NAB has never attempted another study
5 to use in this way that has taken place after the year
6 in question?

7 A Right.

8 Q Even though you could do so at any time,
9 correct?

10 A I suppose, yes.

11 Q Now --

12 ARBITRATOR WERTHEIM: Excuse me. What's
13 the year that was in question in this study done in
14 '85?

15 THE WITNESS: 1983.

16 MR. LANE: You can answer that.

17 THE WITNESS: 1983.

18 ARBITRATOR WERTHEIM: Thank you.

19 BY MR. LANE:

20 Q And there were others -- it's fair to say
21 that there were other concerns expressed about these
22 studies in the tribunal's 1983 final determination?

23 A Yes, that's my understanding.

24 Q And those concerns -- nothing has been
25 changed in the studies themselves that would solve

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1 those concerns since then?

2 A These two ELRA studies?

3 Q The two studies that you present on
4 page 9.

5 A Well, no, of course not. I mean, the
6 studies are done, concerns are expressed, and we're
7 still talking about the same studies so nothing has
8 been done with these studies.

9 Q Could you turn to page 10 of your
10 testimony, please? You refer to a study that was part
11 of our case and is again part of our case in this
12 proceeding, correct, in the first paragraph on this
13 page?

14 A Yes.

15 Q Did you review the entire study?

16 A No.

17 Q What did you review?

18 A As I recall, some printouts and some
19 summary tables.

20 Q Did you review it to determine whether TBS
21 had studied heavy and light viewers?

22 A To see whether TBS had studied heavy and
23 light viewers?

24 Q Yes.

25 A No.

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1 ARBITRATOR WERTHEIM: Can you identify the
2 particular study that you're referring to here?

3 THE WITNESS: The ratings study, summary
4 of ratings data.

5 ARBITRATOR WERTHEIM: Do you have an
6 exhibit reference?

7 THE WITNESS: I don't know.

8 BY MR. LANE:

9 Q Do you know which one of your exhibits?

10 A For the viewing study? The closest would
11 be the -- well, Exhibit 1, the summary viewing study
12 there.

13 Q Now, on page 10 of your testimony --

14 A Right.

15 Q -- do you know -- do you have an exhibit
16 that refers to that study?

17 MR. STEWART: Could you be more clear
18 about that -- "that study" when you refer to --

19 BY MR. LANE:

20 Q Page 10, you refer, do you not, to a study
21 done by WTBS?

22 A Oh.

23 Q In the first full paragraph on page 10.

24 ARBITRATOR WERTHEIM: Do you recall who
25 the representative was?

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1 BY MR. LANE:

2 Q Are you --

3 A I don't --

4 MR. STEWART: He's on page 10 of the ELRA
5 study.

6 MR. LANE: Of his -- of your testimony.

7 THE WITNESS: Of my testimony. All right.

8 BY MR. LANE:

9 Q Of your written direct testimony in this
10 case.

11 A Too many page 10's for me. Okay. Now I'm
12 with you.

13 Q All right. Why don't we go over that
14 whole line of questioning again.

15 A Okay.

16 Q All right. That was a study done by WTBS,
17 was it not?

18 A Yes.

19 Q And that was presented in our case in 1990
20 and --

21 A Yes.

22 Q And that's where you got the information?

23 A Yes.

24 Q And are you aware that we're presenting
25 that study again in this proceeding?

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1 A I guess so, yeah.

2 Q Okay. And what did you review from that
3 study?

4 A Well, excerpts from some of the data
5 summaries and some of the methodology sections.

6 Q Do you have an exhibit that refers to
7 that?

8 A Yes.

9 Q And what exhibit is that?

10 A Exhibit 4.

11 Q Okay. Now, does that constitute all of
12 the information you reviewed from that study?

13 A Yes.

14 ARBITRATOR WERTHEIM: Who was the
15 representative of TBS who presented that study? Do
16 you recall?

17 THE WITNESS: I believe it was Mr. Sieber.

18 BY MR. LANE:

19 Q Could we turn to page 14 of your
20 testimony?

21 A Okay.

22 Q At the top of the page, you refer to some
23 of the letters received by WGN in the period 1990 to
24 '92, correct?

25 A Yes.

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1 Q And that's contained in Exhibit 5 of your
2 testimony, the ones that were selected?

3 A That's correct.

4 Q How were those selected?

5 A Well, there were several thoughts in mind.
6 One was to pick letters that would be illustrative of
7 the point of news avidity, avidity to news programming
8 and other kinds of programming on a station. They
9 were from, in some cases, given the context of the
10 letters, it was clear that there are cable
11 subscribers.

12 The point was to try to get people --
13 letters from people that were distant cable
14 subscribers, where they would receive WGN as a distant
15 signal, as an effort to try to get -- restrict the
16 selection to those kinds of instances and give
17 examples from that group of people of avidity for
18 station-produced programming.

19 Q How many letters did you look through to
20 get these?

21 A I think the -- it was the public file for
22 the station for the period '90 to '92, so whatever was
23 in the public record.

24 Q Do you have a sense of how much -- how big
25 the public record was?

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1 A No.

2 Q I'd like to turn to a couple of the
3 letters if I can find them. You refer to a few
4 letters regarding the Mass for Shut-ins. Do you
5 recall that?

6 A Yes.

7 Q And there is one of those letters -- and
8 I can't -- is in the -- well, let's see how far it's
9 in -- it's maybe 10 to 12 letters in. It's a typed
10 letter. At the top it has P.O. Box 126, Menlo,
11 Georgia.

12 CHAIRPERSON JIGANTI: What exhibit is
13 this?

14 MR. LANE: It's Exhibit 5.

15 THE WITNESS: Okay. I have that.

16 BY MR. LANE:

17 Q Okay. Do you have that? Now, that
18 indicates that the Mass for Shut-ins was discontinued,
19 correct?

20 A Correct.

21 Q And that was the import of the other
22 letters that were involved?

23 A I think that's right, yes.

24 Q Okay. Now, if you keep your finger in
25 those letters, could you go back to Exhibit 3, the

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1 first page for WGN?

2 A Okay.

3 Q Do you see right -- in the penultimate
4 entry on that page --

5 A Yes.

6 Q -- Mass for Shut-ins?

7 A Yeah.

8 Q Is that the same program, to your
9 knowledge?

10 A I guess I'm not sure specifically that
11 it's exactly the same program.

12 Q Okay. Do you know whether WGN had more
13 than one mass per week?

14 A I don't know.

15 Q Okay. But assuming -- if it were the same
16 program, it appears to have been eliminated by 1992,
17 is that the import of the letters that you have in
18 Exhibit 5?

19 A Yeah, that seems like a reasonable
20 conclusion.

21 Q Okay. And the one before it, the one
22 before the letter from Menlo Park is dated
23 January 27th, and we would assume -- or do you think
24 it would be a fair inference that that's January 27,
25 1992, since it indicates that the mass has been taken

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1 off?

2 A I'm not sure. It could be that it's '93
3 talking about '92 programming.

4 Q Well, the one for Menlo Park is April 23,
5 1992.

6 A Yeah, I'm not sure.

7 Q Okay. But in any event, it appears that
8 Mass for Shut-ins was not being aired in 1992 on WGN?

9 A For at least part of the time, if -- if we
10 assume these are the same programs that the letters
11 and the other exhibits talk about.

12 Q Well, you didn't mention two weekly masses
13 in your list, did you?

14 A Well, the list isn't all of the programs.

15 Q Okay. But you do mention when the program
16 appears more than once a week in your testimony?

17 A Do you mean like a five day a week evening
18 newscast, that it appears more than once a week?

19 Q Yeah. Or like the pre- and post-game
20 shows that you indicate appear at various times.
21 There's nothing in your testimony in Exhibit 3 that
22 would suggest there are two Mass for Shut-in programs,
23 is there?

24 A That's correct.

25 Q Could you turn to the top of page 15 of

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1 your testimony?

2 A Okay.

3 Q And in this case, you're talking about
4 carriage of individual local news programs.

5 A Right.

6 Q Right? When did this occur?

7 ARBITRATOR WERTHEIM: You're referring to
8 the Lake Tahoe situation or western Wisconsin or --

9 MR. LANE: I'm referring to both.

10 THE WITNESS: Generally, we're in the
11 period '90 to '92. I don't remember exactly where in
12 that period these instances fall.

13 BY MR. LANE:

14 Q These were not instances of situations
15 involving retransmission consent agreements?

16 A Do you mean on a local basis?

17 Q Yes.

18 A I think these all refer to distant
19 signals, not local signals.

20 Q Now, that -- when you refer -- when you --
21 in the third sentence where you're referring to
22 western Wisconsin, do you see that?

23 A Yes.

24 Q And that involved a local program being on
25 a cable network channel, right?

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1 A The local program of the distant signal?

2 Q Yes.

3 A Yes.

4 Q What cable network was that?

5 A I don't know.

6 Q Is that, in your mind, outside the
7 compulsory license if it was broadcast on a cable
8 network?

9 A If it was broadcast on a cable network or
10 a channel used to carry that cable network?

11 Q Either.

12 MR. STEWART: I'd like to object to
13 questions on this line, unless Dr. Ducey's competence
14 to give an opinion on the legal implications of
15 whether something is subject to the compulsory license
16 is established.

17 CHAIRPERSON JIGANTI: Overruled. You may
18 inquire. I think it's a question of credibility as to
19 that question. It's just a question of credibility.

20 THE WITNESS: Could you repeat the
21 question, please?

22 BY MR. LANE:

23 Q Yes. If -- no, not if -- this program was
24 carried on a channel otherwise devoted to a cable
25 network. That's what you state, correct?

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1 A Yes.

2 Q Does that fall outside the compulsory
3 license?

4 A I guess I don't know.

5 Q Do you know, was the station compensated
6 for this carriage?

7 A I don't know what the circumstances were
8 of this situation.

9 Q Now, in the next sentence you refer to
10 other cable systems also carrying only the news
11 programming from distant signals. Do you see that?

12 A Yes.

13 Q Is that in the same type of situations --
14 that is, on a channel otherwise devoted to a cable
15 network?

16 A I think -- I'm not sure, again, of the
17 specific carriage circumstances, whether it was
18 carried -- the program was carried on a channel that
19 the cable system was otherwise a cable network, or
20 local origination character generated, I'm not sure
21 what the circumstance was.

22 Q Now, at the top of the page you refer to
23 situations where dropping a distant signal from cities
24 within the same state, while continuing to carry a
25 local signal from a nearby city in an adjacent state.

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1 Do you see that?

2 A Yes.

3 Q So in this situation -- this is a
4 situation where the people were not interested in the
5 news from an adjacent state, even though it was
6 nearby?

7 A I don't see the reasoning for that
8 conclusion.

9 Q Okay. Well, what was the -- the
10 implication is not that they were dropping this and
11 continuing to carry local signals from a nearby city
12 in an adjacent state. What do you mean by this
13 sentence, then? I don't understand what you're --
14 what does the "while continuing to carry local
15 signals" add to this sentence?

16 A There were local signals. In other words,
17 the community would be inside one of these TV areas of
18 dominant influence. They would continue to carry
19 those in their channel inventory, but they would drop
20 a distant signal -- a signal that was distant -- but
21 in terms of its assignment in TV markets, but it would
22 be still in the same state. So people would be
23 interested and, in fact, demonstrate an interest in
24 that signal, albeit distant, because it presumably had
25 coverage of news information at the state level that

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1 was interesting to them.

2 Q Okay. But what does the "while
3 continuing" --

4 A Well, it's a comparison. I mean, this is
5 a comparison between local and distance relative to
6 subscriber interest in the channel. For policy
7 purposes, the station -- the system carried the local
8 signal of a city that's in a different state, but they
9 dropped the distant signal, but that station had
10 programming relevant to the state. And people were
11 interested in other information happening in their
12 state.

13 Q Okay. But they weren't interested in the
14 news and information about a nearby city in an
15 adjacent state?

16 A I don't come to that conclusion from this.
17 The point here is that there is a station that's in
18 their same state that was dropped, and that was not
19 good news.

20 Q Okay.

21 A It doesn't mean necessarily that they're
22 not interested in what's on a local station. They
23 didn't complain about the carriage of the local
24 stations. They complained about the dropping of the
25 distant station.

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1 Q Well, I guess then I keep coming back,
2 then why did you have the words "while continuing to
3 carry local signals?"

4 A It's, again, a comparison.

5 Q I mean, that doesn't suggest that if they
6 didn't carry those local signals they wouldn't have to
7 drop those distant signals? That's not what you meant
8 by this sentence?

9 A In terms of channel inventory on a system?

10 Q No. By what you meant -- yes, in terms of
11 channel inventory.

12 A Yeah. I mean, the -- I mean, if a new
13 independent station started up and claimed carriage
14 privileges on the system, it would have to -- if there
15 is limited channel inventory, in this case they would
16 have to pick a signal to drop, the cable operators.
17 And if they pick a signal to drop that subscribers
18 like, they complain about it. So it's --

19 Q Could you just explain briefly why they
20 would have to carry that local station?

21 A Because of the must carry rules that --

22 Q Yes.

23 A -- cable operators are obligated to carry
24 the signals of local TV stations.

25 Q Okay. So in some cases, they don't want

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1 to carry those local signals? Even though they're in
2 the market, they'd be clearly within the 150 miles,
3 wouldn't they, for the local signals, by definition?

4 A I suppose. I don't know for sure.

5 Q Now, was the sense of the bill -- the
6 bills that you discussed here -- that you should carry
7 in-state programming and not out-of-state programming?

8 A My understanding is that it was --
9 subscribers had expressed an interest in getting this
10 programming and that particular programming. So
11 perhaps an exemption could be created to allow at
12 least that programming to make it through, even if the
13 whole station couldn't be served over the cable
14 system. So it's -- my sense of this is it was more to
15 create an exemption specifically for that programming.

16 Q Okay. Now -- okay. I think now I
17 understand where my confusion was. You have -- the
18 first sentence says, "While continuing to carry local
19 signals from a nearby city," and that, you've told us,
20 is because they must carry those signals under the
21 rules, correct?

22 A Yes.

23 Q And so the complaints occurred because to
24 do that they lost the distant but in-state news
25 programming, right?

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1 A Yes.

2 Q So given the choice there, they would
3 rather take something that's in-state rather than an
4 adjacent city's programming, right? That's what this
5 says here.

6 A Well, what it says is that when people
7 lose the distant signal programming they're upset.

8 Q But it says that they didn't care that
9 they gained local signals from a nearby city in an
10 adjacent state.

11 A That's an inference you're making. That's
12 not the inference I am presenting here.

13 Q Okay.

14 A I think the point here is that when you
15 take away a channel that has programming people like,
16 they get upset and they write in. There is -- nobody
17 wrote in to say, "We're mad that you added the local
18 station."

19 ARBITRATOR WERTHEIM: Was a local station
20 added? I thought it was continued.

21 THE WITNESS: Well, it's the -- right,
22 continued to carry local stations, right. So of a
23 range of signals that could have dropped, the cable
24 operators either did or threatened to drop the distant
25 signal.

1 BY MR. LANE:

2 Q Now, at the bottom of the page, you talk
3 about reality shows. Do you see that?

4 A Yes.

5 Q Now, could you describe what a reality
6 show is for us?

7 A It's a genre of programming that I guess
8 takes the news and goes beyond it or something. It's
9 like A Current Affair, or something like that, where
10 it's -- it takes a topical item in the news and sort
11 of goes behind the scene, the people and personalities
12 behind it, motivations for doing certain things, maybe
13 some sensational kinds of news items. That's one kind
14 of reality show.

15 Q And are those syndicated programs?

16 A In some cases, yes.

17 Q Does --

18 A There is --

19 Q I'm sorry.

20 A I was going to say like this -- the
21 reality genre programming -- as TV station news got
22 more competitive in recent years, there would be some
23 exciting elements to the news program on the station's
24 newscast that would be added in, and that really was
25 an attribute of the news program that viewers really

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1 liked. And so stations started to respond to that by
2 developing their own station-produced shows, focusing
3 on just some of those areas, and then later some of
4 the shows might have gone into syndication.

5 One example of an element of a newscast
6 that became a show and then went into syndication was
7 with KTVU, Carolyn Chang, and we talked about that.
8 There was one program in particular, Bannmiller On
9 Business, not necessarily a reality show, but at least
10 that's an example of an element that was on the local
11 newscast.

12 Brian Bannmiller I think his name was
13 talked about business, and the station audience
14 research revealed that people really liked that
15 segment a lot. So they gave Brian Bannmiller a chance
16 to start his own station-produced program, which he
17 did, and that was very successful and it then went
18 into syndication.

19 Q And now these reality programs, as I
20 understand your sentence here, are ones that have
21 instrumental viewers?

22 A I would think so, yes.

23 Q Could you turn to page 16, please?

24 A Okay.

25 Q In the second sentence you use the word

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1 "appealing." Can you tell us what you meant by that?

2 A Avidity, preference, favorableness,
3 importance of program content.

4 Q And then you refer to programs that have
5 appeal because of their genre in the next sentence.
6 Do you see that?

7 A Yes.

8 Q And those types of programs are not
9 limited to the station-produced category, are they?

10 A No.

11 Q There are syndicated programs involving
12 sports, outdoors, news, and children, correct?

13 A Yes.

14 Q Well, is this whole paragraph just meant
15 to be any type of programming that meets these
16 criteria will be appealing?

17 A It depends what you mean by these --
18 meeting these criteria. There are a number of
19 different elements in a program that may or may not
20 have appeal to people. I mean, if you looked at a
21 program like the ones we saw yesterday, and each of us
22 made a list of things that appeal to us and then we
23 collected those lists and summarized them, that would
24 be a list of all of the different things that could
25 appeal to us as a group. As individuals, different

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1 elements might appeal.

2 Some of us might be avid sports fans. So
3 if it's a sports program, that would be on my list.
4 The content had to do with sports -- that was
5 interesting -- the WTTG show, for example. Other
6 programs -- if you're a parent, have kids, Popcorn
7 might have been particularly appealing, so that
8 specific content might have been very appealing.

9 So by this I don't mean that if a program
10 has any one of these attributes it's, by definition,
11 appealing across the board. These are sort of
12 ingredients of appeal from the perspective of cable
13 audiences in this case.

14 Q Would it be fair to say that the more of
15 them that you had the more appealing it would be?

16 A It depends. I guess I would be more
17 comfortable saying there's a relationship between the
18 programming attributes and individuals' preference for
19 that program. So that for one type of a person one
20 attribute may be more important than everything else,
21 so if that attribute is present or not helps
22 predetermine whether that person is going to watch
23 that program.

24 For other people, they maybe have
25 preferences but not so strong so it would take two,

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1 three, four of these attributes before they become
2 attracted enough to the program. Maybe they like news
3 but it's just not news in general, so international
4 news wouldn't be good enough. It would have to be
5 regional news to attract them into it.

6 Q Yesterday I thought I heard -- were you
7 the one that added up the number of news programs, or
8 was it John? In the three years.

9 A I think I did, too. I think we both maybe
10 did.

11 Q Now, was there an importance in adding up
12 the number of news programs that had been telecast
13 during those three years?

14 A I guess just generally to inform the panel
15 that there is a lot of news shows out there, and with
16 respect to our category news constitutes a majority of
17 the program type. So if it's going to be
18 characterized, this category of programming, as news
19 programming, that's a fair way to characterize it
20 since that's a lot of what the content of the programs
21 is.

22 ARBITRATOR WERTHEIM: Would you
23 characterize news about sports as news or as sports?

24 THE WITNESS: I mean, obviously, you could
25 go either way. The sports segment of a newscast would

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1 be classified as news for programming purposes. A
2 sports talk --

3 ARBITRATOR WERTHEIM: In the news segment
4 of a sportscast?

5 (Laughter.)

6 THE WITNESS: The sports segment of a --
7 it's my left-handed thinking. I always flip things
8 around. The sports segment of a newscast that -- in
9 that context, it's news. If it's a sports discussion
10 show, whether it's presenting sports news, scores from
11 around the nation or something, that kind of a program
12 would be classified by the industry as a sports
13 program. So essentially the same content, depending
14 upon its program context, would be called news or
15 sports.

16 ARBITRATOR WERTHEIM: What about the news
17 about the latest Hollywood affair? Is that news or
18 something else?

19 THE WITNESS: Similar -- similar -- it
20 depends upon how it gets treated. It could go beyond
21 news into reality. But something like Hersey's
22 Hollywood, say that was -- started off as a segment on
23 a station newscast and then became maybe popular
24 enough to become its own program. Within the context
25 of a news program, if it's a segment that's

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1 quote/unquote "news" --

2 ARBITRATOR WERTHEIM: Whose Hollywood?

3 THE WITNESS: Dana Hersey. He is a
4 program -- host of a program that was on WSBK. So
5 it's -- there is specific content that, for program
6 type purposes, in one context might be called news
7 because it falls within a newscast. But if it expands
8 to become its own show, you might classify that as a
9 sports program. So sports news per se in one context
10 will be part of a news program; in another context it
11 might be part of a sports classified program.

12 So it's -- the way you asked the question,
13 it could sort of go either way. It depends upon the
14 context.

15 CHAIRPERSON JIGANTI: For our purposes
16 here, "sports" means live sports. "News" means --
17 news might include sports.

18 THE WITNESS: Right.

19 CHAIRPERSON JIGANTI: If it goes on more
20 than -- once it becomes under syndication, then it
21 becomes perhaps one of Mr. Lane's clients.

22 THE WITNESS: Okay. So, in that case,
23 station-produced sports programs, for example, would
24 be a program about sports, a discussion program about
25 sports that would appear only on that station. So

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1 that would be called a sports program within a
2 station-produced category.

3 BY MR. LANE:

4 Q How do people think of reality programs?
5 Do they think of those as news programs?

6 A I haven't done any research or seen
7 research specifically on that question, but my
8 judgment is there would be probably two kinds of
9 people -- one kind of person that sees reality
10 programming as real, and another kind of person who
11 sees reality programming as unreal.

12 (Laughter.)

13 CHAIRPERSON JIGANTI: Maybe on that note
14 we ought to adjourn for lunch.

15 (Laughter.)

16 Meet back here at 1:00.

17 (Whereupon, at 12:01 p.m., the hearing
18 recessed for lunch.)
19
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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(1:08 p.m.)

CHAIRPERSON JIGANTI: You may proceed,
Mr. Lane.

MR. LANE: Thank you.

BY MR. LANE:

Q Would you turn to page 22 of your
testimony, Mr. Ducey?

ARBITRATOR WERTHEIM: Would that mean
we're two-thirds of the way through?

(Laughter.)

MR. LANE: I'd like to be 90 percent of
the way through.

THE WITNESS: Okay.

MR. LANE: I only get to ask the questions
and not answer them.

BY MR. LANE:

Q These are programs that are contained on
the stations that you have in that great number of
exhibits that you have?

A Yes.

Q And did you pick the programs first or the
stations first?

A The -- I don't remember specifically,
actually. The intent was to get some representation

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1 around the country. Maybe it was the stations first
2 I guess. The representation around the country,
3 different station types, and then the programming.
4 But I -- I can't remember which came first, the
5 program type or the stations -- the programs or the
6 stations.

7 Q Now, for KPLR, which -- I don't know what
8 exhibit number it is -- that's the one that you have
9 on the easel, though, correct?

10 A Yes.

11 Q And that's Exhibit 13 in your testimony?

12 A Right.

13 Q The only program that you list for KPLR in
14 this list is all outdoors, correct?

15 A Yes.

16 Q And, similarly, you list a single program
17 for each of the other stations that you have for which
18 you have an exhibit, correct?

19 A I think that's right, yes.

20 Q Now, is it your testimony or is it an
21 implication from your testimony that because of that
22 single program, KPLR was carried on those cable
23 systems?

24 A No. As I say in the written testimony,
25 this is a set of examples of programs. And there are

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1 more station-produced programs beyond this here.

2 Q Are there more station-produced programs
3 for KPLR?

4 A Yes.

5 Q Have you listed them anywhere in your
6 testimony?

7 A No.

8 Q And if my -- if I asked you the same
9 question about each of the stations, would you have
10 the same answer?

11 A Yes. Again, this is just meant to be some
12 examples.

13 MR. LANE: I'm going right up to 70
14 percent, Judge Wertheim.

15 BY MR. LANE:

16 Q Can you turn to page 28?

17 A Okay.

18 Q Okay. Why did you -- for the network
19 affiliates -- page 27, I guess it's really -- for the
20 network affiliates, you identified whether there was
21 a different affiliate of the same network carried by
22 the cable system, correct?

23 A Yes.

24 Q Why don't you do that for independent
25 stations?

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1 A Why did I not do that?

2 Q Yeah. Whether there was another
3 independent station from the same market carried.

4 A Oh, I see. The point of the head-to-head
5 comparison of affiliated stations was as evidence that
6 a cable operator would be picking the distant signal
7 that has the same affiliation as some other signal on
8 the basis of more than just the network programming.

9 Q Okay. So, in other words --

10 CHAIRPERSON JIGANTI: Would you repeat
11 that answer again?

12 THE WITNESS: Oh, sure. If a cable system
13 has two stations, both of the NBC affiliation, one
14 station -- the second station would be added
15 presumably not just to repeat the same programming at
16 the same time on NBC but for the station's other
17 programming, again, with the idea that you pick your
18 lineup of channels to please your subscriber base.

19 CHAIRPERSON JIGANTI: Thank you,
20 Mr. Ducey.

21 BY MR. LANE:

22 Q And in the list of cable systems that you
23 present in each of your exhibits, you've marked in
24 various places X's, correct?

25 A Yes.

1 Q As carriage, and that means what?

2 A That the -- that that signal, distant
3 signal, was carried as -- the signal was carried as
4 partially distant, and it was distant for some of the
5 cable subscribers but not for other parts of the cable
6 system.

7 Q So, in other words, if a cable system
8 serves two towns, the station might be local in one
9 town but distant in the other?

10 A Yes.

11 Q Okay. Could we turn to page 34, please?

12 A Okay.

13 Q You indicate at the bottom of the page
14 that you omitted the most widely carried superstations
15 from the analysis. Do you see that? And the
16 analysis --

17 A Yes.

18 Q -- is actually an analysis you have in
19 Exhibit 35, is that correct?

20 A Right. What was the question again?

21 Q Is the analysis to which you refer in that
22 sentence on page 34 the analysis in Exhibit 35?

23 A Which sentence? I'm sorry.

24 Q The five most widely carried superstations
25 sentence, the second one from the bottom.

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1 A In --

2 Q All right. Tell me what analysis -- to
3 which you're referring in this sentence.

4 ARBITRATOR WERTHEIM: Isn't that a
5 reference to the proceeding -- the 1989 proceeding?

6 THE WITNESS: The -- if I understand your
7 question, the five most widely carried superstations
8 were omitted from the analysis. That's the analysis
9 that I was describing yesterday of how many signals
10 are within different mileage ranges.

11 BY MR. LANE:

12 Q Okay. That's what that is?

13 A What -- it's -- right. So that would be
14 for the three years -- I think that's in Exhibit 41,
15 not Exhibit 35.

16 Q Okay.

17 ARBITRATOR WERTHEIM: Well, just to
18 clarify, is this the analysis that you're referring to
19 in the opening sentence of that paragraph that was
20 presented in the 1989 proceeding?

21 THE WITNESS: We had the same kind of
22 analysis for the '89 proceeding, yes.

23 ARBITRATOR WERTHEIM: The same kind or the
24 same analysis?

25 THE WITNESS: It was the same analysis.

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1 But it was -- I mean, it was updated for the same, you
2 know, distance calculations and it showed change over
3 time. So it was updated to reflect '90 to '92.

4 ARBITRATOR WERTHEIM: And the update is
5 Exhibit 41?

6 THE WITNESS: Exactly.

7 BY MR. LANE:

8 Q Okay. In that same sentence you refer to
9 the issue of local appeal. Do you see that?

10 A Yes, I do.

11 Q Could you explain what you meant by that?

12 A Local appeal, in the written testimony, I
13 have set off in quotation marks. And that's because
14 that term or that concept was something introduced by
15 the tribunal, and it was the Tuscaloosa versus Tulsa
16 kind of situation.

17 Q It was Tacoma, but --

18 A Tacoma. I'm sorry. My T's are off. The
19 localness would not be perhaps so intuitively apparent
20 to cities that are extremely far apart across the
21 country. But if the distances are relatively
22 regional, within 150 miles or less, that sense of
23 local -- given geographic influences of major cities,
24 for example.

25 In the case on this map here, it seems

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1 more intuitive that a subscriber receiving KPLR in
2 Quincy, for example, could be interested in St. Louis.
3 So that's one sense of local there.

4 Q Does this mean in your testimony, in the
5 analysis, I take it you accepted that premise, that's
6 why you excluded the superstation?

7 A We tested the premise. The tribunal
8 expressed its thought that some notion of localness
9 was important geographically, and the point of the --
10 this analysis was to show that it's not Tuscaloosa and
11 Tacoma. It's Quincy and St. Louis.

12 Q But do these five stations -- they don't
13 present the same issue, is that what you're saying?

14 A Potentially, they might not have since
15 they -- as superstations they were more broadly
16 available geographically around the country. So to --
17 for the purposes of this analysis, to control for the
18 distorting effect of stations that are carried on
19 geographically a much wider basis than a station in
20 St. Louis, for example, that's not in a satellite,
21 pull those stations out of the group and analyze the
22 rest and see how they cluster geographically. That
23 was the intent of the analysis.

24 So I guess with the assumption that, in
25 fact, that would distort this attempt to show that

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1 most of the stations cluster geographically, those
2 five stations were held up in a separate group.

3 Q So these five stations present an entirely
4 different issue from the local appeal issue?

5 A For the purposes of this analysis, that's
6 what was being tested.

7 Q Well, how was it being tested? Do you
8 know -- you didn't include any of these stations --

9 A Right. That's right.

10 Q -- right?

11 A It was -- the assumption was made that
12 they could be different, so they were identified and
13 not included in the analysis. And for purposes of the
14 research design, the assumption was made that these
15 could be different. Let's take them out of the pool
16 of stations and look at the rest of the stations. But
17 that's correct, they weren't actually tested in this
18 set of analyses.

19 Q So are you conceding that they don't have
20 local appeal in the same way?

21 A No.

22 Q Okay. Have you done any tests to see
23 whether they have local appeal or not?

24 A Well, looking at their programming, I
25 mean, not the same kind of geographic kind of

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1 analysis. But if you look at the programming that we
2 present examples of, that's one indication of the
3 appeal -- is it more local, or is it more regional, or
4 even more general than that?

5 Q But we don't have any analysis
6 geographically the same way that we have for the other
7 stations, do we, in your presentation?

8 A No.

9 ARBITRATOR WERTHEIM: In that case,
10 Dr. Ducey, what is the basis for your statement in the
11 last sentence on that page that even for some of the
12 superstations there is a degree of regional
13 concentration?

14 THE WITNESS: There is, I believe -- let's
15 see, the carriage patterns of -- I think WTBS -- I
16 can't remember where I got the information. TBS has
17 a broad geographic carriage, but WSBK, for example,
18 from Boston, is I know carried mostly regionally
19 throughout New England and New York. As I was
20 mentioning yesterday, that's one of the stations I'm
21 familiar with.

22 So I think that even -- even in the case
23 of the so-called superstations, other than TBS, the
24 other four there, most of the carriage is not -- not
25 within the same kind of 150-mile circle, but in

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1 practice still clustered in general regions of the
2 country.

3 BY MR. LANE:

4 Q Now, it's true, is it not, that in your
5 analysis you compared a Chicago station, you analyzed
6 a Chicago station, WFLD?

7 A Yes.

8 Q And you analyzed a Boston station, WLVI?

9 A Yes.

10 Q And you analyzed an Atlanta station, WGNX?

11 A Yes.

12 Q And that's Exhibit 24?

13 A Right. Okay.

14 Q Okay. So you looked at one station in
15 each of the markets that three of the superstations
16 are in, correct?

17 A Yes.

18 Q But you didn't compare how the carriage of
19 -- let's just stay with WSBK that you've discussed
20 just a moment ago -- compared with WLVI, did you?

21 A No.

22 Q So we don't know how that would break out.
23 Would it be the same as WLVI? Would it be different?

24 A SBK's carriage --

25 Q Yes.

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1 A -- versus LVI's?

2 Q Yeah.

3 A Well, SBK is a superstation. I presume it
4 would have not the same clustering that LVI's carriage
5 pattern would have. It would be more geographically
6 dispersed. When I lived in upstate New York, for
7 example, I could get WSBK. LVI wasn't one of the
8 signals available.

9 Q Now, if there isn't a regional
10 concentration, what would that show in your mind?

11 A If there?

12 Q If there wasn't regional concentration.

13 A If there was no regional concentration?

14 Q Yeah. What would that show?

15 A For -- for distant --

16 Q For anything.

17 A Well, the -- the fact that there is some
18 regional concentration in terms of carriage to me is
19 indirect evidence that the programming -- the station-
20 produced would have an interest to -- it would be
21 interesting to subscribers in those communities.

22 If there was no regional concentration, it
23 would mean, I suppose, that that intuitive link
24 between the station-produced news programming, as an
25 example, and where people live might not be as strong

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1 in the judgment of cable operators.

2 ARBITRATOR FARMAKIDES: Could you
3 reexplain that, please, a little differently?

4 THE WITNESS: Right. I'm trying to think
5 backwards to answer the question. If there was no
6 regional concentration, what would that mean? The
7 fact that there -- I guess it's easier for me to
8 answer it in the positive instance.

9 If there is regional concentration, which
10 means that cable operators are making a judgment that
11 closer in signals are more important to them, so if
12 there was no regional concentration I suppose that
13 that would mean to the extent -- if the cable operator
14 has all different stations to choose from, I guess in
15 point of fact the cable operator could pick any TV
16 station in the country to carry on the system.

17 But the systems tend to carry TV stations
18 that are in closer. So why would a -- a cable
19 operator carry WLVI as a distant signal and not KTVU?
20 Perhaps there is something more local or regional
21 about the programming of WLVI. If there was no such
22 regional concentration, I guess that that would mean
23 that there was no regional appeal or local appeal for
24 those distant signals.

25 BY MR. LANE:

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1 Q Now, looking at KPLR -- I'm just selecting
2 that because you have it up on the easel, but it's
3 also Exhibit 13 in your testimony, correct?

4 A Yes.

5 Q Are you suggesting that all of the cable
6 -- that you have presented all of the cable systems
7 within 150 miles of St. Louis on this map?

8 A No.

9 Q Do you know how many cable systems are
10 encompassed in that area?

11 A I don't know. The attempt here was to
12 talk about the Form 3 systems.

13 Q Okay. Do you know how many Form 3 cable
14 systems there are in that area?

15 A No. But the ones that are carrying KPLR
16 as a distant signal are identified. I'm not sure.
17 They may be others that don't want to carry KPLR.

18 Q But all of the other cable systems that
19 are in that 150 miles, and I guess it's fair to say in
20 -- and would have to pick up KPLR as a distant signal,
21 have not done so, correct?

22 A Yes, presumably.

23 Q Okay. Do you know, are there any cable --
24 did you attempt to make this all cable systems, Form 3
25 cable systems that pick up KPLR as a distant signal?

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1 A Yes, according to the Larson data.

2 Q Okay. But, I mean, if they were more than
3 150 miles, you would have noted it somewhere as you
4 did in some of other cases?

5 A Yeah, that would -- yeah.

6 Q But we don't have any idea of how many
7 cable systems in this area that could have picked up
8 KPLR as a distant signal decided not to do so.

9 A Correct.

10 Q And the same would be true if I asked you
11 about each of the other maps that you've presented, is
12 that true?

13 A True.

14 CHAIRPERSON JIGANTI: Excuse me one
15 second. I know you testified about this yesterday.
16 The yellow area, now is that an area where a radio
17 station has a -- a television station has exclusive
18 coverage? Or is it just a -- the circle around the
19 station there, KPLR?

20 THE WITNESS: Yeah, the --

21 CHAIRPERSON JIGANTI: The yellow area is
22 really the -- what do you call it, the --

23 THE WITNESS: ADI.

24 CHAIRPERSON JIGANTI: -- ADI.

25 THE WITNESS: Right.

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1 CHAIRPERSON JIGANTI: All right. So that
2 -- I thought that was it. But are there -- there are
3 no distant signal stations in the ADI, other than the
4 ones you're talking -- in the ADI.

5 BY MR. LANE:

6 Q Does St. Louis have other stations that
7 are carried as distant signals?

8 A Oh, yes. Yes. I presume so, yes.

9 Q Okay. Let me, if I may, if you'd indulge
10 me for a moment, why don't you turn to --

11 CHAIRPERSON JIGANTI: You're being a lot
12 more articulate than I was.

13 BY MR. LANE:

14 Q Could we turn to Exhibit 27, please?

15 A Okay.

16 Q And that's WLVI, right?

17 A Yes.

18 Q And even though that's Cambridge, that's
19 Boston, Massachusetts, for all practical purposes,
20 right?

21 A Yes.

22 Q Okay. And we know for certain that WSBK
23 is a station from Boston, Massachusetts, right?

24 A Yes.

25 Q And we know that it has distant carriage

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1 someplace, right?

2 A Right.

3 Q But you haven't shown any of that on this
4 map, correct?

5 A Right. This is station by station.

6 Q Right.

7 A So this is W --

8 Q But it's only for a single station, WLVI.

9 A Yes.

10 Q And if we went to, for example,
11 Exhibit 24, which is WBNX, that's a station in
12 Atlanta, Georgia, correct?

13 A Yes.

14 Q And we know WTBS is a station in Atlanta,
15 Georgia, right?

16 A Yes.

17 Q And you haven't shown the carriage of
18 WTBS, either within this 150 miles or anyplace else
19 around the country, right?

20 A Correct.

21 Q So there are other stations in each of
22 these markets, and what you haven't shown is how much
23 distant signal carriage they have, is that correct?

24 A Yes.

25 Q So we don't know, for example, if KPLR is

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1 even the most widely carried distant signal in St.
2 Louis, is that right?

3 A From this map, right.

4 Q From anything that you've presented in
5 your testimony.

6 A Right.

7 Q And we do know in the case of Atlanta that
8 WGNX is clearly not the most widely carried station in
9 Atlanta, right?

10 A Widely carried station from --

11 Q As a distant signal.

12 A Right, from Atlanta. Right.

13 Q And we know in the case of Boston,
14 Cambridge, that WLVI is not the most widely carried
15 signal, and that's a distant signal originating from
16 Boston, correct?

17 A Correct.

18 Q So -- yes?

19 CHAIRPERSON JIGANTI: What struck me is
20 that there is nothing right in the ADI as a distant
21 signal outside of the broadcast area, where there is
22 in the -- in the case of WLVI and there is in the case
23 of WGNX. I guess that's just a coincidence. There is
24 no -- there is no conclusion to be drawn from that.
25 Is that correct?

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1 THE WITNESS: There is no distant signal
2 carriage inside the ADI.

3 CHAIRPERSON JIGANTI: Yes. Whereas, the
4 other ones in Georgia, all sorts of them, and so in --
5 in the case of WLVI, there are all sorts of them
6 within the ADI. But there is no conclusion. It
7 doesn't mean anything, I gather.

8 THE WITNESS: Yeah, I'm not sure.

9 CHAIRPERSON JIGANTI: I don't think so.

10 BY MR. LANE:

11 Q Well, it could mean that there are a lot
12 of significantly viewed counties in the St. Louis area
13 in the ADI, correct?

14 A Yes.

15 Q Could you explain what a significantly
16 viewed -- or a station that is significantly viewed in
17 the county means?

18 CHAIRPERSON JIGANTI: This is one of the
19 things that is going to be on our glossary, I gather.

20 (Laughter.)

21 MR. LANE: Actually, Ms. Kessler will
22 discuss this term as well, but it probably will be on
23 our glossary, right.

24 THE WITNESS: My understanding is that
25 there are several ways a station can be classified as

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1 a local signal for purposes of a cable system channel
2 carriage. And if it's significantly viewed, if it's
3 viewed by a certain percentage of people off air, not
4 over a cable system, then enough county -- in that
5 county, that station can be called local, even though
6 it's relatively far away, beyond 35 miles. So it
7 would be available to a county.

8 In a different circumstance, it would have
9 been distant. But since enough people watching it are
10 able to receive it off air, their signals go out
11 different distances. A UHF signal won't go out as far
12 as a VHF signal. And lower channels on a VHF band --
13 channel 2, 3, 4 -- will travel out even further, so
14 it's possible to receive those signals off air, even
15 if they are a distance away. And if enough households
16 watch those stations, they become local, classified as
17 local stations.

18 CHAIRPERSON JIGANTI: For our purposes
19 here, I consider that informational. There is no
20 inference to be drawn from -- there is no legal
21 significance as far as these proceedings go -- the
22 information I have just elicited, is there?

23 MR. LANE: Well, a significant -- I don't
24 want to say there is no legal significance. If a
25 cable system is located in a county that's considered

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1 significantly viewed for that station, then that
2 carriage is considered local, and no royalty payment
3 is given for that.

4 So in the case of Atlanta, it has a very
5 large ADI. And that's why there can be distant
6 carriage within the ADI, because not all of the
7 counties within it are significantly viewed or fit the
8 other FCC rules that would make them local. I don't
9 know the situation in St. Louis as well, so I can't
10 really say.

11 ARBITRATOR WERTHEIM: Dr. Ducey, by "off
12 air" you meant carried by cable?

13 THE WITNESS: By "off air," I mean by
14 antenna, not on cable.

15 ARBITRATOR WERTHEIM: Maybe that should go
16 to our glossary also.

17 (Laughter.)

18 And "off network."

19 THE WITNESS: Off air, over the air, so
20 you're receiving it not over the cable but by
21 transmission over the airwaves.

22 BY MR. LANE:

23 Q So from looking at that map what we know
24 is if there are -- and by "that map" I'm referring to
25 the KPLR map in Exhibit 13, and also on the easel --

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1 we know that if there are any cable systems that could
2 receive KPLR as a distant signal within the ADI, they
3 don't.

4 A According to the Larson data, yes.

5 Q Right. And if we look at your Exhibit 24,
6 for example, with WGNX, we know that there must be
7 some distant areas inside the ADI.

8 A Yeah, exactly. I mean, for all of these
9 exhibits, the map exhibits, the point was to respond
10 to the tribunal interest in this concept of localness,
11 and these are just indirect evidence of the idea that,
12 in fact, relatively close-in cable systems elect to
13 carry this signal, WGNX, WLVI, whatever, and there is
14 this clustering effect that the cable systems that
15 elect to carry the station are relatively close in.

16 That's -- that's the point of the -- this
17 whole series of exhibits. It's not meant to
18 characterize any differences between cable systems in
19 the same geographic region that elect to carry it or
20 not. It's just of those who do carry it, where are
21 they? That's basically the simple point behind the
22 maps.

23 Q But it doesn't tell us whether there are
24 other stations in the same market.

25 A Right.

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1 Q That may have a different mix of programs
2 that are carried by more or less -- carry more or
3 less?

4 A It does not. Again, each map takes one
5 station at a time and says who carries it where. And
6 when you observe that you see that there is this
7 regional clustering effect station by station.

8 ARBITRATOR WERTHEIM: How did you select
9 the stations for this series of exhibits?

10 THE WITNESS: To show a mix of different
11 station types, independent, those affiliated with
12 networks, different regions of the country, to
13 represent kind of a mix that way.

14 BY MR. LANE:

15 Q Did you -- I'm sorry.

16 A I was just going to say some from
17 California and some from Massachusetts, some from
18 Georgia, some from Washington, NBC affiliates,
19 independents.

20 Q Did you analyze any other stations besides
21 the one you presented?

22 A Besides the ones in here?

23 Q Yes.

24 A Not that I recall. I think we just looked
25 at these.

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1 Q Did you have the Cable Data Corporation
2 information about these stations before you picked
3 them?

4 A Yeah, I think we did.

5 Q So did you analyze that before you picked
6 the stations?

7 A Yeah. There is -- I'm trying to remember
8 the sequence of things. I know that we were trying to
9 get some regional representation and some affiliate
10 representation, so combining that objective with the
11 available data from Larson it was maybe sort of an
12 interactive thing as to -- I mean, I'm not sure that
13 we had a list of stations and then listed the data.
14 I think it was maybe with some objections of minus,
15 what kinds of stations to get, select some that way.
16 But it was sort of an interactive thing, I guess.

17 Q It's true that Larson has -- isn't it true
18 that Larson has, or Cable Data Corporation as we've
19 been referring to it, has this information about every
20 single station that's carried as a distant signal by
21 Form 3 systems?

22 A Correct, for those that file statements of
23 account.

24 Q So it wasn't for lack of data about other
25 system stations that you selected these?

1 A Right.

2 Q I'd like to refer to Exhibit 35, if I may.
3 And I'm just going to refer to the number charts --

4 A Okay.

5 Q -- rather than the line graphs. Let's
6 look at the bottom one first, and that refers to --
7 well, before we start that, why did you exclude the
8 five superstations from this analysis? Or I shouldn't
9 say exclude them, but give them their own group.

10 A It's -- well, they -- the objective here
11 is to measure incidence of carriage. And as a group,
12 whenever you're doing analysis from a statistical
13 perspective, you try to keep the group -- what's
14 called "within group variation," you want to minimize
15 that and maximize between group variation, to see if
16 your grouping factors can contribute to the
17 explanation.

18 So as a class of stations, those five
19 stations would obviously have much more incidence of
20 carriage of superstations than all of the rest of the
21 stations. So that was the reason to break those out
22 as a group.

23 Q Wouldn't that show that there is no
24 regional clustering, in effect, that most of the
25 distant carriage is not carried on a regional basis

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1 but as superstations and all around the country?

2 A In this analysis, it's just incidence of
3 carriage, not where that carriage is geographically.

4 Q Well, could you turn to page 35 of your
5 testimony? Do you have it?

6 A Yeah.

7 Q It's probably easier if you take the
8 exhibit out of there.

9 A Oh, okay.

10 Q Okay. Do you see in the second paragraph
11 on that page, is that where you refer to Exhibit 35
12 and tell us what it's all about?

13 A Yes.

14 Q Okay. Now, it states in the first
15 sentence that, "The trend towards regional clustering
16 was offset by a countervailing trend in the mix of
17 signals." Do you see that in the first sentence of
18 that second paragraph?

19 A Yes.

20 Q Okay. And that trend in the mix of
21 signals definitely tended to more independent stations
22 and fewer network stations.

23 A Okay.

24 Q Is that -- that's what it says there,
25 right?

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1 A Yes.

2 Q Okay. Now, is the next sentence -- what
3 does the next sentence mean, for purposes of that
4 analysis?

5 A Well, the -- the assumption was that there
6 were more network -- independent stations being
7 carried and fewer network stations being carried in
8 the mix of distant signals.

9 Q Right.

10 A But that's not correct.

11 Q Well, aren't the superstations all
12 independent stations?

13 A Yes.

14 Q Okay. So it's only if you exclude the
15 superstations that that is not correct, right?

16 A Right.

17 Q So if we include the superstations as
18 independents, clearly there are a lot more independent
19 stations than there are network affiliates.

20 A Yeah.

21 Q So is there -- what are you asking the
22 panel to do, just to ignore the superstations for this
23 purpose?

24 A No, to recognize that they are a separate
25 kind of service, essentially, from a channel

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1 perspective. When you're looking at the different
2 mix, that to the extent there is any difference
3 between affiliates and independent stations, but for
4 the superstations -- and if you'll look at the graphs
5 behind the table in the Exhibit 35, actually there is
6 more affiliates being carried except for this specific
7 group of five superstations.

8 Q But the specific group of five
9 superstations by itself is larger than all of the
10 other independents in network stations combined,
11 right?

12 A Yes. So the point of this was to say
13 where the generalization is being made to the
14 character of all stations in the group of distant
15 signal carriage incidences, actually there is -- there
16 is two things happening. One thing is what's
17 happening with superstations and their status --
18 affiliation status as independents.

19 But if you look at that group
20 independently, and then look at everything else that's
21 being carried, actually most of what else is being
22 carried -- or more of what everything else that's
23 being carried is -- are affiliate stations. So it was
24 to clarify that I think overbroad statement to say
25 that, in fact, most of the superstations -- most of

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1 the carriage incidents are affiliates.

2 Q Well, does that mean that different
3 considerations should be used to evaluate superstation
4 carriage, and then all other carriage?

5 A It depends on what you mean by
6 "consideration." Again, the point here is --

7 Q I mean, the considerations that you've
8 used in your testimony.

9 A Yeah. To the extent that the tribunal had
10 been interested in what was different about the
11 programming on affiliate versus independent stations,
12 the point of this was to provide additional
13 information. That, in fact, of the non-superstation
14 carriage, there are a lot of affiliates, in fact more
15 affiliates than there are independents. So it's just
16 to respond to some of the tribunal's thinking.

17 Q Now, at the bottom of page 35, you
18 indicate that the gap widened somewhat between 1989
19 and 1992. I take it that's for the non-superstation
20 3.75 signals.

21 A Correct.

22 Q Okay. I look at this table with the
23 numbers in it. I look at 1989-1, which is the second
24 column from the left in there.

25 A Okay.

1 Q Right? And I see 176 network affiliates,
2 106 independents. That's a difference of 70, right?

3 A Yes.

4 Q Okay. Then I go to the far right-hand
5 column, and I see 171 and 101, right, for the same --
6 for the network affiliates?

7 A Yes.

8 Q And that's a difference of 70, isn't it?

9 A Yes.

10 Q So where is the widening?

11 A The -- well, the "widen" is -- it happened
12 in that example you cite, but for the -- not for the
13 3.75 signals, but for the signals carried on the -- on
14 another basis.

15 Q Okay. So this gap that you're talking
16 about doesn't relate to non-superstation 3.75 signals?

17 A That sentence is referring to the other
18 instances of carriage.

19 Q Okay. And again, that's the gap for non-
20 superstations?

21 A Correct.

22 Q And again, for the 3.75 signals, the
23 superstations had, by themselves, much more carriage
24 than all of the other stations combined, right?

25 A Yes.

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1 Q Now, how did you identify the incidents of
2 distant 3.75 carriage? How did you identify a
3 particular station?

4 A Using Cable Data Corporation as a source?

5 Q Yes. I'm confused. Was that an answer
6 when you asked me --

7 A No. Cable Data Corporation.

8 MR. LANE: Okay. Those are all the
9 questions I have, Mr. Chairman.

10 CHAIRPERSON JIGANTI: Thank you, Mr. Lane.

11 Anybody else wish to examine Mr. Ducey?

12 CROSS EXAMINATION

13 BY MR. HESTER:

14 Q Good afternoon, Dr. Ducey. My name is
15 Timothy Hester. I represent the Public Television
16 Claimants.

17 A Good afternoon.

18 Q Dr. Ducey, I wanted to go back to a
19 question that the panel raised this morning about the
20 relationship between time and potential value of
21 programming on a distant signal. Let me ask you to
22 imagine a distant signal with three different types of
23 programming -- X, Y, and Z to keep it completely
24 benign in value, neutral.

25 MR. GARRETT: I know which one is Z.

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1 (Laughter.)

2 MR. HESTER: That's my secret weapon.

3 (Laughter.)

4 BY MR. HESTER:

5 Q And on a time basis, I want you to assume
6 that 60 percent of the programming on a time basis is
7 category X, 30 percent category Y, and 10 percent
8 category Z. All right?

9 A Okay.

10 Q Are you with me so far? And just roughly,
11 in terms of hours -- I should actually make these
12 percentages approximate, because I couldn't make the
13 hours come out squarely. But assume with me this
14 would be 2.5 hours for category Z, 7 hours for
15 category Y, and 14.5 hours for category X. All right?

16 A Okay.

17 Q Are you with me so far?

18 A Yes.

19 Q And that's roughly the way that they would
20 allocate if these were the three categories of
21 programming, right?

22 A Okay.

23 Q Now, for the cable operator that elects to
24 bring in this hypothetical signal on a distant basis,
25 it has no option to pick and choose between categories

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1 X, Y, and Z in terms of what it imports, correct?

2 A Correct.

3 Q It has to take this signal as it finds it
4 on the over-the-air broadcast, right?

5 A True.

6 Q Now, for that cable operator, I want you
7 to assume the following. That for the cable operator
8 it is really driven to import this distant signal
9 principally because it wants to get access to
10 category Z programming. Category Z is valuable to
11 that cable operator. All right? I want you to assume
12 that.

13 A Okay.

14 Q And would you agree with me that there can
15 be some instances where a cable operator would decide
16 that a particular type of programming found on the
17 distant signal would be particularly valuable to it?

18 A Yes.

19 Q And that other categories, even with more
20 time during the day on that signal, would be less
21 valuable to it?

22 A Correct.

23 Q And let me to -- just to illustrate this
24 in the hypothetical, let me ask you to assume that for
25 this cable operator that's importing the signal, it

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1 would assign 50 percent of the value of that distant
2 signal to category Z. All right?

3 A Okay.

4 Q And it would assign 40 percent of the
5 value to category Y and 10 percent to category X, all
6 right?

7 A Okay.

8 Q Now, is it plausible to you, based on your
9 experience in the industry, that there could be a
10 circumstance such as this where the cable operator
11 elects to import a distant signal, and the value of
12 the programming that it's importing is
13 disproportionate to the amount of time of the
14 different programming types it finds on the signal?

15 A Yes.

16 Q And so if we were to look in this
17 circumstance at the value among these three particular
18 program categories, we would get a quite different
19 picture, in terms of value, than we would get from
20 looking at time, correct?

21 A That's true.

22 Q And, indeed, in this hypothetical, the
23 value would be, for category Z, five times greater
24 than would be suggested simply by looking at time.

25 A True.

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1 Q Now, if the cable operator had the ability
2 to alter the mix of programming on that distant
3 signal, I take it the cable operator might well elect
4 to carry more of Z and less of X, right, if it had the
5 ability to alter the signal?

6 A Possibly.

7 Q Let's say, for instance, that the cable
8 operator believed that category Z programming was very
9 attractive to subscribers, and that if it could carry
10 more of category Z programming it could attract more
11 subscribers. I want you to assume that for these
12 purposes.

13 A So assumed.

14 Q But, in fact, the cable operator doesn't
15 have that capability of altering the mix of the
16 programming. It takes the signal the way it is set up
17 by someone else, correct?

18 A Yes.

19 Q Okay. Now, I'm almost out of room, but
20 I'll try to squeeze in -- try to squeeze in viewing
21 over on the side here. I want you to assume a
22 household that is particularly attracted to
23 category Z, and I want you to further assume a
24 household that keeps on the television all day.
25 Sometimes, as Mr. Lane alluded to before, sometimes

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1 that that household may keep the television on more or
2 less as background. Sometimes the people in the
3 household may really sit down and watch a program.
4 Have you, in fact, in your research seen examples of
5 that, where during different times of the day a
6 household or a viewer may pay more or less attention
7 to the programming on the TV?

8 A Yes.

9 Q And so, in this example, if we were to
10 look at viewing, and if the household kept the
11 television on for large chunks of the day, what would
12 be the results looking at it in the sense of viewing?

13 A In terms of the value?

14 Q Well, the viewing -- am I right that the
15 viewing figures would tend to be heavily based on the
16 amount of time --

17 A Yes.

18 Q -- of different programming categories?
19 Is that the way the viewing figures would tend to work
20 out?

21 A Yes.

22 Q But the viewing figures would not
23 necessarily track the value of that programming to the
24 cable operator in terms of its ability to attract and
25 retain subscribers?

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1 A That's correct.

2 Q Now, you said in your testimony yesterday
3 that you did not consider viewing to be a good proxy
4 for viewer satisfaction or preference. Do you recall
5 that?

6 A Yes, I do.

7 Q And could you explain why that is true?

8 A Well, you just gave an excellent
9 demonstration of why it's not true. The amount of --
10 the percentage of your time that is spent with TV does
11 not necessarily predict the value of the viewing
12 experience, and there's any of a number of reasons for
13 that.

14 People may have the TV on as background
15 noise, or they may have it on but they're not paying
16 attention to it for one reason or another. And
17 satisfaction is predicted by attention. If you have
18 the TV on and you're not paying attention to it,
19 whatever is on there is not very likely to be
20 particularly satisfying to you because you're not even
21 really sure what's on.

22 Q Well, and is there also a phenomenon where
23 somebody might pay attention to a show, they might
24 watch a particular show, but it wouldn't be the type
25 of program that would motivate them to subscribe to

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1 cable?

2 A Yes.

3 Q And, indeed, aren't there any number of
4 instances where it would be true that a particular
5 program, although it might be a program people would
6 watch, would not be the sort of program that would
7 cause them to plunk money down every month for cable?

8 A Yes, that's true, too.

9 Q And it's because a lot of programming is
10 available over the air of the same kind of genre as
11 they might find on their cable system, right?

12 A That might be a factor, but it's more
13 content specific than number of choices available with
14 that same content for specific -- there's a kind of
15 content -- if it doesn't, you know, motivate you or
16 excite you or inform you, then it doesn't really
17 matter how many of those choices there are available.
18 It's more content specific than number of content
19 delivering mechanisms.

20 Q Let me go back to this example. I -- in
21 my column here on value, when I had described the
22 hypothetical to you, I had put it in terms of the
23 value that would be attached by the cable operator to
24 the programming. Do you recall that in the
25 hypothetical? And now let me change it to the value

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1 that would be placed by the subscriber on the
2 different kinds of programming.

3 In other words, if we asked the
4 subscriber, what causes you to pay for your cable
5 service, and on -- as to this particular channel, the
6 subscriber said -- gave the same numbers. "I value
7 the Z category particularly heavily. That's really
8 attractive to me. I value the Y category somewhat
9 less, and I don't place much value on that X category,
10 even though there is a lot of it." Are you with me so
11 far?

12 A Yes.

13 Q Does that comport with your understanding
14 of the way cable subscribers might, in fact, view the
15 value of a given cable channel?

16 A Yes.

17 Q And does it comport with the way that
18 cable subscribers might, in fact, view the value to
19 them of a given distant signal?

20 A Yes.

21 Q That there might be some types of
22 programming on that distant signal that were really
23 attractive to them and some much less, right?

24 A Yes.

25 Q Now, if we looked, again, in terms of

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1 thinking about what drives that cable subscriber to
2 subscribe, if that were the question, would you agree
3 with me that time would not be a valid measure of the
4 value that that cable subscriber places on the distant
5 signal?

6 A Yes, I agree.

7 Q And, furthermore, if the -- let's move it
8 away from a cable subscriber who watches 24 hours a
9 day and try to simplify it a little bit. Let's say
10 that the cable operator -- I'm sorry -- the cable
11 subscriber watches -- what's an average number of
12 hours that somebody watches TV a day?

13 A Three, three and a half.

14 Q Three and a half. And so we know this
15 cable subscriber really likes category Z, right?

16 A Yes.

17 Q So let's say that the cable subscriber
18 watches category X for -- I'm going to have them doing
19 more than the average, all right?

20 A Sure.

21 Q Simplify the numbers. Say the cable
22 subscriber watches category X for two hours, watches
23 category Y for a half hour, and watches category Z for
24 one hour. Okay? Is that three and a half? Actually,
25 it is, isn't it?

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1 A Not bad.

2 Q Now, what would the viewing data tell you
3 in that circumstance about the value of the different
4 kinds of programming if you were to look -- if you
5 were to determine the value to that cable subscriber
6 based on viewing?

7 A If I -- I mean --

8 Q It would tell you that X is the most
9 valuable if you were to look at it in viewing terms,
10 right?

11 A No.

12 Q I'm asking if one were to look only at the
13 viewing data, if you knew nothing else about this
14 cable subscriber and you just took the viewing data --

15 A Right.

16 Q -- would it suggest that category X was
17 the most valuable?

18 A Well, to me, this is like having two
19 columns of numbers, one with height and one with
20 weight, and you're telling me if somebody weighs a
21 certain amount of pounds, tell me how tall they are.
22 You can't get from one to the other very well.

23 Q Okay. So the viewing data couldn't be
24 used to predict necessarily the value that that cable
25 subscriber is placing on the different kinds of

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1 programming. The cable subscriber might be watching
2 certain parts of the programming mix, but we can't
3 look at the viewing data and figure out the particular
4 kind of programming that is avidly watched, right?

5 A Exactly.

6 Q And we can't identify, from looking at the
7 viewing data, what drives that cable subscriber to
8 subscribe.

9 A Correct.

10 Q That's why we need something that focuses
11 more on value and avidity and less on viewing.

12 A Exactly.

13 Q And that's the point of your testimony
14 that you've given today and yesterday, right?

15 A I hope so.

16 ARBITRATOR WERTHEIM: Dr. Ducey, is it
17 fair to say that all of your answers to this line of
18 questioning have been based on the premise that the TV
19 set is left on for most of the day, and your answers
20 would be very different if you had a highly
21 instrumental viewer who only turned it on when he
22 wanted to watch program Z?

23 THE WITNESS: Well, actually, you've
24 introduced a third dimension, which is viewing
25 motivation in addition to time spent and -- and value

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1 of that program. An instrumental viewer -- if you
2 have an instrumental viewer --

3 ARBITRATOR WERTHEIM: Z is the only
4 program he likes, and that's the only time he puts his
5 TV set on.

6 THE WITNESS: Then, by definition, that
7 viewer would not be watching X and Y.

8 ARBITRATOR WERTHEIM: Right.

9 THE WITNESS: So if it's a --

10 ARBITRATOR WERTHEIM: Even though it's
11 available on his channels.

12 THE WITNESS: Right. But, I mean, if --
13 if somebody is an instrumental viewer, by definition,
14 there is avidity as we've constructed the --

15 ARBITRATOR WERTHEIM: His avidity is for
16 program Z.

17 THE WITNESS: Well, let me --

18 ARBITRATOR WERTHEIM: Or we'll call it
19 channel Z.

20 THE WITNESS: Okay. Whatever. I mean, if
21 somebody is watching TV 24 hours --

22 ARBITRATOR WERTHEIM: He just doesn't turn
23 it on when there isn't something that he's avid to
24 watch.

25 THE WITNESS: Okay. In that case, there

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1 is avidity. Whatever an instrumental viewer does,
2 that's avid viewing.

3 ARBITRATOR WERTHEIM: And in that case --
4 in that viewer's case, value would correspond with
5 time and with --

6 THE WITNESS: Yes.

7 ARBITRATOR WERTHEIM: -- hours, wouldn't
8 it?

9 THE WITNESS: Right. Right. In some
10 instances, if somebody is 100 percent instrumental in
11 their viewing, the only time they watch TV is for
12 instrumental purposes, then in that case viewing and
13 -- I mean, viewing and value would --

14 ARBITRATOR WERTHEIM: Would coincide.

15 THE WITNESS: -- would, by coincidence, be
16 the same, yes.

17 BY MR. HESTER:

18 Q Well, let me circle back to that for a
19 moment. In this viewing column, we've listed a total
20 of 3.5 hours, right?

21 A Yes.

22 Q And that's the total number of hours
23 during the day that this TV was actually turned on.

24 A Yes.

25 Q Right?

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1 A Well, for that person, yes.

2 Q For that person.

3 A Right.

4 Q So this is not -- in the viewing column,
5 we're not thinking of a person who has got his TV on
6 24 hours a day. We're thinking of a person who has
7 actually viewed the television for three and a half
8 hours, right?

9 A Yes.

10 Q And so thinking of that viewing mix,
11 because -- because we've constructed a hypothetical
12 here, we know something more about that person than
13 simply viewing. We know what the person is avidly
14 attracted to, correct?

15 A Yes.

16 Q And we know that the person is avidly
17 attracted to Z and watched it for an hour, right?

18 A Yes.

19 Q We also know that the person, although the
20 person is not avidly drawn to X, indeed watched two
21 hours of X.

22 A Yes.

23 Q Are there examples where that could
24 happen, that somebody watches a program for two hours,
25 or a set of programs for two hours, and they're not

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1 actively attracted to it?

2 A Yes. I mean, there is -- as with any
3 statistics, there is this sort of normal curve
4 distribution. At one end would be the 100 percent
5 instrumental viewer; and for that one type of person
6 viewing would equal valuation on a percentage basis,
7 because they only watch things which are highly
8 instrumental.

9 At the other end, they could be somebody
10 who is 100 percent ritualistic viewer. They have no
11 value for the programming for 100 percent of their
12 time. Either of those extremes are most unlikely to
13 find in the actual population of people. Most of the
14 cases are somewhere in between, and probably, you
15 know, assuming it's normally distributed,
16 characteristic of people to be more ritualistic or
17 more instrumental in their viewing, most of it tends
18 to heap up around the middle, and that's the normal
19 distribution.

20 But the 100 percent ritualistic and 100
21 percent instrumental viewer are the most unlikely
22 cases, and most of the viewing style is somewhere
23 between, sometimes ritualistic, sometimes
24 instrumental. But either case is possible. You could
25 the 100 percent ritualistic viewer; you could also

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1 have the 100 percent instrumental viewer.

2 Q If we're trying to undertake the inquiry
3 of assessing what is of value to cable operators in
4 attracting and retaining subscribers, would you agree
5 with me that the viewing numbers aren't going to tell
6 you the answer to that issue?

7 A Yes, I would.

8 Q And it's because, as reflected in this
9 illustration, the value that the cable subscriber
10 places on those different programs may be very
11 different from what is reflected in the pattern of
12 viewing.

13 A Yes.

14 Q Now, the time data that we show over on
15 the left-hand side of this chart where we show 60
16 percent of the time allocated to category X, 30 to
17 category Y, and 10 percent to category Z, that's
18 reflective of the total mix of programming for a whole
19 day, right?

20 A Yes.

21 Q And would you agree with me that viewing
22 data tend to be heavily correlated with the time, the
23 different time kinds of programming are on?

24 A Yes.

25 Q Why is that?

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1 A Well, the -- the greater -- the more often
2 the program is available to be viewed, the more often
3 it is viewed. So, in other words, if you turn the TV
4 on and 60 percent of the time a certain program is on,
5 program X of that type, just by chance 60 percent of
6 the time it will be program type X that you're
7 watching.

8 If program Z is on only 10 percent of the
9 time, then when you turn the TV on, on average, one
10 out of ten times it will be a program of type Z that
11 you're exposed to.

12 Q And that point is particularly applicable
13 because a lot of TV viewing is -- what is your other
14 term besides instrumental?

15 A Ritualistic.

16 Q Ritualistic -- that a lot of TV viewing is
17 not particularly oriented toward finding the one
18 particular show that's on at one time, right?

19 A Exactly.

20 Q A lot of TV viewing is oriented toward
21 having the TV on for a certain block of time, correct?

22 A Yes.

23 Q And there may be some programs within that
24 block that are particularly attractive and some that
25 are not, but the TV may be on for a given period.

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1 A Yes.

2 Q And that's one of the significant reasons
3 that the time the different kinds of programming are
4 on the screen bears a heavy relationship to viewing
5 hours, right?

6 A Yes.

7 Q Let me ask you to turn to page 9 of your
8 testimony, please.

9 CHAIRPERSON JIGANTI: Mr. Hester, will
10 your exam proceed for a while?

11 MR. HESTER: Yes. Well --

12 CHAIRPERSON JIGANTI: Let's take a recess,
13 10 minutes.

14 (Whereupon, the proceedings were off the
15 record from 2:15 p.m. until 2:40 p.m.)

16 CHAIRPERSON JIGANTI: You may proceed, Mr.
17 Hester.

18 CROSS EXAMINATION (continued)

19 BY MR. HESTER:

20 Q Okay, Dr. Ducey, let me ask you to look at
21 page nine of your testimony, please.

22 A Okay.

23 Q And I wanted to direct your attention to
24 the table at the top part of the page summarizing
25 these various studies, the operator surveys, the

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1 subscriber survey, the MPAA Viewing Study from the
2 1983 case. Do you see that?

3 A Yes, I do.

4 Q And Mr. Lane had asked you about a
5 criticism that has been lodged by the Tribunal to the
6 effect that the NAB surveys had been conducted in
7 1985. Do you recall that?

8 A Yes.

9 Q Now, would that criticism be in any way
10 applicable to the data that you're showing here or to
11 the comparison that you're making here? In other
12 words, are these comparisons that you're drawing
13 between different kinds of surveys affected by the
14 year in which the surveys were actually conducted?

15 A Well, potentially if the NAB surveys
16 conducted in 1985 respondents were asked to make
17 valuation judgements about decisions made in 1983, so
18 there is some potential effect due to the passage of
19 time and memory fatigue.

20 Q But in your judgement, does the
21 relationship that's shown here between the subscriber
22 survey and the viewing study results --does that same
23 type of relationship apply more generally to
24 programming beyond the 1983 year?

25 A Yes.

1 Q And the column for the subscriber surveys
2 is meant to be some sort of a comparison avidity as
3 contrasted with the viewing figures, is that right?

4 A Yes.

5 Q And could you explain why it's meant to be
6 a measure of avidity?

7 A It's a valuation measure which is one of
8 the ways one can talk about avidity. Subscribers are
9 asked to make a judgement about the relative value of
10 different kinds of programming rather than how much
11 they viewed.

12 Q And so in particular, there's one type of
13 programming that fares poorly in terms of avidity, is
14 that right?

15 A Relative to the other program categories,
16 I guess --

17 Q The syndicated series?

18 A Yes.

19 Q And could you explain what the data show
20 if you compare, for instance, the viewing figures
21 shown there as contrasted with the subscriber data?

22 A Sure. Comparing the numbers, syndicated
23 series shows 51.87% of all viewing goes to that
24 category as compared to, in the subscriber survey, 17%
25 of the subscriber valuation accrues to that category.

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1 Q Now, what conclusion do you draw from that
2 relationship?

3 A This, to me, would be evidence that
4 syndicated series as a content type tends to be
5 associated with more ritualistic viewing rather than
6 more instrumental viewing or more avid viewing.

7 Q Now, is that the same sort of point that
8 would be reflected in the schematic that we put up on
9 this chart before that you could have a category with
10 a lot of viewing, but relatively small valuation by
11 subscribers?

12 A Exactly.

13 Q Now, what do -- the figures shown for PBS,
14 there's a higher figure shown in terms of the
15 subscriber survey than the viewing study, is that
16 right?

17 A Yes.

18 Q And in your judgement, does that reflect
19 a viewer avidity or a viewer preference for PBS
20 programming that goes beyond viewing numbers?

21 A Well, nominally, yes; but given the
22 relative precision of measures, that's pretty close.

23 Q And how about the -- or could you describe
24 for me, please, the relationship between the operator
25 survey and the subscriber survey? Did those two

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1 columns measure, in your judgement, different things
2 about viewer avidity?

3 A Yes.

4 Q Can you explain that, please?

5 A Well, --

6 Q I'm focusing you now on the two right-hand
7 columns for the operator survey as contrasted with the
8 subscriber survey.

9 A Right. There are different tasks being
10 presented to people. In one case, the person is a
11 cable operator asked to make a professional judgement
12 about the valuation of program types to them in their
13 business, and that's the third column, the operator's
14 survey.

15 In the fourth column, instead of being
16 asked to make a professional judgement, the human
17 being in this case is being asked to make a person
18 judgement -- what's more important to me among the
19 different program types. So the task being put to the
20 people are different.

21 Q And so, the -- would you agree that the --
22 well, first of all, the numbers shown for PBS in the
23 operator's survey are 2.5%; and in the subscriber
24 survey, 5.8%, is that right?

25 A Yes.

1 Q And would you agree with me that that
2 difference would be one reflection of viewer avidity
3 for PBS programming?

4 A The difference between 2.5 and 5.8?

5 Q Yes, the fact that there's a much --
6 significantly higher rating in the subscriber survey
7 as compared to the operator survey reflects viewer
8 avidity for the PBS programming.

9 A Well, the premise of -- a significance
10 difference, I don't come to that conclusion.

11 Q Isn't this share more than double?

12 A Looking at the numbers, but using two
13 different scales. Again, the surveys were different
14 kinds of tasks being put, so you can't compare the
15 numbers as directly as you're suggesting. Although
16 they're numbers, they're measures of something
17 psychological. It's not like comparing inches
18 measured in one case to inches in another case.

19 These are a little bit different kinds of
20 measures than that. So I don't feel comfortable
21 saying that the subscriber survey at 5.8 is more than
22 twice what the operator survey or the 2.5 -- it's more
23 of a relative science than that kind of absolute
24 science.

25 And in any case, it's sort of apples and

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1 oranges. You're asking people in one case to make a
2 professional judgement, and you're asking people in
3 another case to reveal to you their own preference,
4 their own personal preference. So it's -- I don't
5 come to the conclusion that you're suggesting, I
6 guess.

7 Q So in terms of what the subscriber survey
8 showed, you would take that as a reflection of
9 subscriber's personal preferences for different kinds
10 of programming?

11 A Exactly.

12 Q Okay. And these two NAB surveys that are
13 summarized here and that you've included as exhibits,
14 did both of those surveys use a methodology in which
15 PBS programming was automatically assigned a zero
16 value if the given cable operator had not carried PBS
17 as a distant signal or the given subscriber has not
18 received PBS as a distant signal?

19 A It depends what you mean by automatically.
20 The respondents in each survey were presented with the
21 relevant mix of channels. And if PBS was among the
22 mix of channels on the system, that was included --
23 and in essence, given a non-zero weight. If the PBS
24 signal was not part of the channel line up, it was not
25 one of the options respondents were reacting to.

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1 So I suppose by default that was given --
2 that category was given a zero weight.

3 Q So if there were 100 respondents in the
4 operator survey and only ten of them had actually
5 carried a PBS signal during the survey year, 90 of
6 them were given a zero value for purposes of coming up
7 with that average, right?

8 A Yes.

9 Q Okay. Same point as to the subscriber
10 survey, that if you -- if there were 100 subscribers
11 to the survey but only ten of them had actually
12 received a PBS distant signal, then 90 of them were
13 assigned a zero value for purposes of computing this
14 average?

15 A Yes. Again, the average -- the things you
16 include in calculating an average statistically are
17 things that are present. So if something is not
18 present, you wouldn't include it in computing the
19 average. Or from a mathematical perspective, you
20 would give it a zero weight.

21 Q Right.

22 A So there's many more possibilities that
23 aren't included on this that would also be given a
24 zero weight.

25 Q Well, were there any other of the

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1 categories or programming that were given a zero
2 weight as to any of the respondents?

3 A I'm not sure about the devotional.

4 Q Let me direct your attention to Tab 2,
5 Exhibit 2 of your testimony.

6 A Okay.

7 Q And I think if you look at --

8 A Okay, for this -- right, it was only PBS
9 and Canadian stations were offered as categories to
10 the respondent to consider only if they were carried
11 on the system.

12 Q Right.

13 A So, if they were not on the system, then
14 in essence, they were given a zero weight.

15 Q And so all of the other categories of
16 programming that are summarized in your table on page
17 nine, each respondent in the survey would have given
18 it a value?

19 A Yes.

20 Q Okay. And the same point applies to the
21 subscriber survey?

22 A Yes.

23 Q Let me ask you about the study that you
24 discuss on page ten of your testimony. This is the
25 survey presented by a representative of WTBS. Do you

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1 see that discussion on page ten?

2 A Yes, I do.

3 Q And could you explain why that survey or
4 study, in your view, is a reflection of viewer
5 avidity?

6 A Yes. As I mentioned earlier, the
7 assumption is that not all programming is equal. In
8 other words, people prefer some content more than
9 others. So in this case, WTBS was trying to assess
10 what program attributes or elements were more
11 favorable in the estimation of subscribers evaluation
12 of a variety of possibilities of program attributes.

13 And that's one way of characterizing
14 avidity.

15 Q And the study itself is included as
16 Exhibit 4 to your testimony, is that right?

17 A Excerpts anyway, yes.

18 Q Yes. Let me direct your attention to the
19 page in Exhibit 4 that is headed -- or that bears the
20 page number IV-3. It's about 15 pages in -- 12 to 14
21 pages in. And it bears the heading Key to
22 Abbreviation For Attributes.

23 A Okay.

24 Q Do you have that page?

25 A Yes, I do.

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1 Q And are these the attributes or categories
2 that were being measured in the study, to your
3 understanding?

4 A Yes.

5 Q And is it your understanding that the
6 column on the right where it shows actual
7 questionnaire wordings, that's actually the language
8 that was put to the respondents in the survey?

9 A Yes.

10 Q And so, for instance, there's a reference
11 educational PGM/Child. Do you see that one? It's
12 about seven down on the left-hand side.

13 A Is it on the first page?

14 Q Go back another page. Are you on page
15 IV-3? You see where it says educational PGM/Child on
16 --

17 A Yes.

18 Q -- page IV-3? And that's the way it's
19 abbreviated in the tabulation of results, correct?

20 A Yes.

21 Q And the actual questionnaire wording is
22 offer educational programs for children. Do you see
23 that?

24 A Yes.

25 Q And that would be the specific language to

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1 which the survey respondents were reacting when they
2 gave their answers?

3 A That's my understanding.

4 Q And for instance, Classic/Donna Reed -- do
5 you see that one a few --

6 A Yes.

7 Q -- entries higher up? And the wording on
8 that one would be show classic shows like Donna Reed,
9 Leave It To Beaver, and Andy Griffith, right?

10 A Yes.

11 Q Are Donna Reed, Leave It To Beaver, and
12 Andy Griffith examples of syndicated series?

13 A Yes.

14 Q And are those programs examples of ones
15 that tend to be heavily featured on certain super
16 station programming as syndicated series?

17 A As syndicated series, yes.

18 Q Yes.

19 A I'm not sure about these specific
20 programs, but --

21 Q Do you know that Andy Griffith is one that
22 if often found on super station programs?

23 A Yes.

24 Q And let me ask you to now turn back to
25 page IV-10. And this shows the responses or the

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1 tabulated results as to all of these particular
2 attributes that were included in the survey, is that
3 right?

4 A That's what it looks to be, yes.

5 Q And so, for instance, the first one, high
6 quality programs, that would be the top ranked
7 attribute in this survey?

8 A Yes.

9 Q And the second one would be limited
10 commercial interruptions?

11 A Yes.

12 Q The third one would be programs family --
13 the whole family can watch?

14 A Correct.

15 Q And so forth. And if we wanted to know
16 the specific language or specific wording of the
17 questionnaire as to any of these responses, we could
18 turn back and look at the questionnaire wording, is
19 that right?

20 A Yes.

21 Q And so, do you see where the Classic/Donna
22 Reed entry appears in this listing? I'll give you a
23 hint. Number 36, is that where it appears?

24 A Yes.

25 Q Now, let me ask you to look at the -- I

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1 guess I'd say the first ten attributes that are ranked
2 here -- high quality programs, limited commercial
3 interruptions, programs the family can watch, wide
4 variety of programs, programs that make you think,
5 programs with something for all, keep you informed or
6 news programs, educational programs for children --
7 and then number ten, programs not available on the
8 network.

9 I've read off nine of the top ten
10 attributes, right?

11 A Yes.

12 Q Would you agree with me that those are
13 attributes that would be applicable to public
14 television programming?

15 A Personally, yes.

16 Q And then if we go on down a few more in
17 the listing, if we look at numbers 13 through 16,
18 programs on animals and wildlife, documentary
19 programs, mystery shows, children oriented programming
20 -- all of those would also be applicable to PBS
21 programming, right?

22 A I think so.

23 Q In light of that, would you agree that
24 this study would reflect a relatively high viewer
25 avidity for public television programming?

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1 A Yeah.

2 Q Let me ask you to turn now to page 11 of
3 your testimony. You can put that exhibit aside. And
4 this is where you're discussing the concept of
5 instrumentalized or instrumental use of public -- of
6 television programming, right?

7 A Yes.

8 Q Maybe I -- my slip referred where my next
9 question is going. Would you include PBS or public
10 television programming as a category that people often
11 look to for instrumental viewing purposes?

12 A Yes.

13 Q And why is that?

14 A Again, the kinds of characteristics that
15 instrumental viewing is associated with is looking for
16 information, looking for excitement, and those are the
17 kinds of characteristics that my general personal
18 familiarity with PBS programming would present.

19 Q You discussed yesterday and you actually
20 showed us a videotaped highlight from children's
21 program called Popcorn. Do you remember that?

22 A Yes.

23 Q And you said that in your judgement
24 Popcorn would be an attractive type of programming for
25 a cable subscriber as I recall it.

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1 A Yes.

2 Q And would you also see it as a type of
3 programming that would be attractive for cable
4 operators as something they would want to carry on a
5 distant signal basis?

6 A Yes.

7 Q And why is that? What is it about that
8 program that you would consider attractive?

9 A Its content is interesting. The way that
10 they do the production with children as the actors --
11 they're the ones that control -- I think that would be
12 compelling, interesting for children. And there's a
13 strong interest in good children's programming on
14 behalf of cable subscribers -- decision to get that
15 service.

16 Q And why do you say there's a strong
17 interest on behalf of cable subscribers in getting
18 good children's programming?

19 A There's -- I guess it's more general
20 knowledge of cable households. One of the reasons --
21 I can't think of a specific study, but cable
22 households with children, the kids watch a lot of TV,
23 and the parents are the ones that are making the
24 subscription decision. They tend to like that kind of
25 programming to be available for social and instructive

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1 involving kind of programming for their kids.

2 So it's -- children's kind of programming
3 is something that cable operators even promote with.
4 They say that they have it available on their system
5 and in their line up.

6 Q So high quality children's programming is
7 something of real value to cable operators to be able
8 to carry in their mix?

9 A Yes.

10 Q And it's also something that's attractive
11 to cable subscribers in making their decisions on
12 subscription to cable?

13 A I think so, yes.

14 Q And would you agree with me that there is
15 a large volume of high quality children's programming
16 on public television?

17 A Relative to their total program schedule?

18 Q Relative to what's found on any other kind
19 of television.

20 A Yes, higher volume, I think generally.

21 Q And the show Popcorn that you highlighted
22 in your testimony and you showed us a videotape from,
23 would you agree that that has some similarities to a
24 number of programs that are found on educational
25 television?

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1 A Not from personal experience.

2 Q Okay. Yeah, you haven't looked at that
3 one way or the other?

4 A Right.

5 Q Okay. You've discussed in your testimony
6 the pattern of seeing a fair amount of a carriage of
7 a distant signal in close proximity to a larger
8 metropolitan area. Is that a fair summary of what
9 your testimony has been --

10 A Yes.

11 Q -- in relation to -- and I'm now putting
12 up on the board again the map you have of KPLR which
13 illustrates that fact around St. Louis, correct?

14 A Yes.

15 Q Would you expect to see the same sort of
16 carriage pattern for a number of public television
17 distant signals? In other words, that one common type
18 of carriage of public television as a distant signal
19 would be to import the public television signal from
20 a larger metropolitan area in reasonable proximity to
21 the cable system. Is that what you would expect?

22 A I suppose. I really don't know that much
23 about the public TV station universe. Most of my
24 information is based on commercial TV.

25 Q So you -- have you ever looked at that one

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1 way or the other?

2 A Not for public stations.

3 Q Okay. Let me ask you to turn, please, to
4 page 29 of your testimony.

5 A Okay.

6 Q At the top of the page, in the second
7 line, you have a reference to KOMO as a "partially
8 distant" signal, do you see that?

9 A Yes.

10 Q What do you mean by "partially distant?"

11 A The cable system serves more than one
12 community. And for the subscribers in at least one of
13 those communities, KOMO must be classified as a local
14 signal. For the subscribers in other communities,
15 it's classified as a distant signal.

16 Q So in other words, there could be a
17 situation where a given cable system might serve a
18 number of communities, and some of them are
19 sufficiently close to the broadcast station that those
20 communities are considered local; yet other
21 communities served by that cable system are further
22 away, and for them, the signal is distant. Is that
23 fair?

24 A Yes, exactly.

25 Q Is that typically the way the term is used

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1 when people refer to a partially distant signal -- is
2 that what it means?

3 A In this Copyright context, yes.

4 Q Okay.

5 A As far as I know.

6 Q Let me ask you to turn back to page seven.

7 This is the last question I have for you.

8 A Okay.

9 Q At the bottom of page seven, the last full
10 sentence on the page reads in part, "Much of the
11 subscriber research conducted by cable operators
12 gauges subscriber interest in channels, not programs."
13 Do you see that?

14 A Yes, I do.

15 Q Could you explain that point, please, and
16 particularly could you explain why it would be that
17 cable operators would gauge subscriber interest in
18 channels and not programs?

19 A The unit that programming is packaged in
20 from the cable operator perspective relative to what
21 they can choose from is channels. So programs come
22 bundled in the form of a channel, so it's an all or
23 none decision on the behalf of the cable operator.
24 They take the channel with all of its programming mix
25 or not.

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1 Q And so that goes back to the schematic
2 that we had put up before that the cable operator
3 takes the distant signal as he finds it, correct?

4 A Yes.

5 Q And similarly, the cable operator takes a
6 cable network as it finds it?

7 A Correct.

8 Q And so there's a mix of programming that
9 the cable operator more or less receives as it exists,
10 --

11 A Right.

12 Q -- as it's been set up by somebody else?

13 A Right.

14 Q And the cable operator has to make a
15 judgement as to whether that channel enhances its mix
16 of programming. Is that the way the cable operator
17 goes about it?

18 A Yes.

19 Q And is that the reason that cable
20 operators, to your experience, focus their research on
21 subscriber interest in channels and not simply
22 programs?

23 A Yes.

24 Q Okay, thank you. Those are all the
25 questions I have.

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1 MR. HESTER: Your Honor, I would propose
2 to mark this schematic for ease of reference as PBS
3 Exhibit 4-X. I'll make a handwritten rendition of it
4 on an 8 1/2 by 11 sheet, if that's all right by the
5 panel.

6 CHAIRPERSON JIGANTI: You're going to
7 reduce that by hand?

8 MR. HESTER: Yes, yes.

9 CHAIRPERSON JIGANTI: Any objection?
10 Well, any objection to the concept of later rendition
11 by freestyle?

12 MR. HESTER: That is a --

13 CHAIRPERSON JIGANTI: We prevail in this
14 proceeding unless you -- no objections to it? Okay,
15 it will marked as your exhibit number -- is that
16 number --

17 MR. HESTER: That will be PBS Exhibit 4-X.

18 CHAIRPERSON JIGANTI: Very good. Cross
19 examination?

20 (Whereupon, the above-
21 referenced document was marked
22 as PBS Exhibit 4-X for
23 identification.)

24 CROSS EXAMINATION

25 BY MR. GARRETT:

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1 Q Dr. Ducey, I'm Bob Garrett, and I
2 represent the Joint Sports Claimants. Good afternoon.

3 A Good afternoon.

4 Q I'm referring to the document that's just
5 been marked as PBS Exhibit 4-X. Did you know that the
6 average household has its TV set tuned on for seven
7 hours a day, Dr. Ducey?

8 A Approximately, yes.

9 Q That's kind of scary, isn't it?

10 A I'll leave that for you to judge.

11 Q You might not believe that, but I actually
12 drove home behind a car last night with a bumper
13 sticker that says kill all television, which is
14 another way of dealing with these proceedings!

15 (Laughter.)

16 Dr. Ducey, let me ask you to turn to page
17 nine of your testimony.

18 A Okay.

19 Q And you refer there in your chart to a JSC
20 operator survey and an NAB operator survey. Do you
21 see that?

22 A Yes, I do.

23 Q Now the NAB operator survey was conducted
24 for the NAB by ELRA, is that correct?

25 A Correct.

1 Q And the JSC operator survey was conducted
2 for the Joint Sports Claimants by Mr. Bortz of then
3 Brown, Bortz and Coddington, correct?

4 A Yes.

5 Q And those two studies were done
6 independently of each other, is that your
7 understanding?

8 A Yes, that's true.

9 Q The study done by ELRA used a simple
10 random sample, is that not correct?

11 A That's my understanding, yes.

12 Q And by a simple random sample, we mean, do
13 we not, that ELRA simply picked every tenth system?

14 A A systematic random sample -- I know a
15 simple random -- I forget exactly what the -- it was
16 a systematic interval or not.

17 Q Okay, what do you mean by a systematic
18 interval?

19 A If you pick a sampling fraction -- if you
20 want to have a final sample of ten and there's 100 in
21 the population, you just pick a random starting point
22 between one and ten and then pick every tenth system
23 to get to the count of ten.

24 Q Okay, and that was the system employed by
25 ELRA in that survey, is that correct?

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1 A I can double check, but I think that's
2 right.

3 Q If you need to double check, please do so.

4 A Looks like they actually used a table of
5 random numbers, the joint numbers, their range of
6 remittance numbers, and selected on that basis. They
7 had a sampling fraction in this case ten. But as I'm
8 reading the message section, instead of taking every
9 tenth one -- I see, right -- in effect, I think that's
10 right. It was a systematic interval relative to the
11 reference numbers.

12 Q But that's different than a stratified
13 random sample, is that correct?

14 A Yes, it is.

15 Q And it's your understanding that Bortz &
16 Company in that particular year used a stratified
17 random sample?

18 A Yes.

19 Q And notwithstanding that the two different
20 methods of sampling were used, the results were --
21 would you say are comparable?

22 A Yes.

23 Q Both studies employed a constant sum
24 methodology, did they not?

25 A Yes.

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1 Q Now you had testified earlier today about
2 construct validity and reliability. Do you recall
3 that?

4 A Yes, I do.

5 Q Could you just briefly explain what you
6 meant by construct validity and reliability?

7 A Sure. Construct validity refers to the
8 relationship between what you're using to measure
9 something and a property -- the actual property that
10 you're trying to measure. So if you're trying to
11 measure length, a ruler would have good construct
12 validity. There's a good correspondence between what
13 the ruler is telling you in terms of how long
14 something is and how long it actually is.

15 If you were to measure attitudes or some
16 psychological property of people, the words that you
17 use to try to measure that that corresponds between
18 the words and that actual attitude, intangible though
19 that it is, is what construct validity is about.

20 So if you're trying to find out if
21 somebody is excited and you say on a scale of one to
22 ten, ten being you're extremely excited and one you're
23 virtually asleep, how excited would you rate your
24 state right now, that would be said to have some face
25 validity and construct validity because semantically

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1 it appears to be related to the property you're trying
2 to measure.

3 Q And reliability?

4 A Reliability is if you take a ruler and I
5 were to measure the length of this desk ten times --
6 ten different trials or ten different times, the
7 extent to which I would end up with the same result
8 each time. If it's a reliable measure, you would get
9 the same result every time whether or not you're
10 measuring what you think you're measuring.

11 So in other words, I could have a ruler
12 that might only be ten inches long instead of 12
13 inches, and I would reproduce that same measurement
14 each time, but it would be incorrect because I'd be
15 using a ten inch ruler instead of a 12 inch ruler. So
16 validity refers to the fact that if it says it's 12
17 inches, it really is 12 inches.

18 If I think I'm measuring how excited you
19 are, I really am measuring that. And reliability is
20 independent of whether the ruler is 12 inches or ten
21 inches long, I can reproduce that same measurement
22 however many times I apply that ruler.

23 Q Now validity and reliability are
24 attributes that any good professionally done survey
25 seeks to achieve, is that not correct?

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1 A Yes.

2 Q Now Doctor, the two cable operator surveys
3 that you reference here on page nine, do they, in your
4 professional opinion, have construct validity?

5 A Yes.

6 Q And what is the basis for that opinion?

7 A Reviewing the wording -- the measurement
8 instrument in this case is not a ruler. It's not
9 quite so tangible. It's the administration of a
10 questionnaire where you set up a frame of reference
11 and use words to measure -- to elicit a response,
12 which is in essence your measurement. And my review
13 of the research leads me to conclude that in fact the
14 semantic correspondence between the way the questions
15 are developed and what the study -- it's designed to
16 measure is pretty good.

17 Q Now when you say your review of the
18 research, which research are you referring to?

19 A The operator surveys and the ELRA
20 subscriber survey also.

21 Q And those are the two surveys that were
22 done for the year 1983, correct?

23 A Yes.

24 Q Okay, have you also performed a
25 professional opinion concerning the construct validity

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1 of the Bortz survey done for this proceeding in '90,
2 '91 and '92?

3 A Yes.

4 Q And is that opinion any different than
5 the one you just expressed with respect to the 1983
6 surveys?

7 A No.

8 Q And let me ask you the same questions
9 concerning reliability. Was it your view that -- is
10 it your view that the surveys done for this
11 proceeding, '90, '91, and '92, are -- reflect such
12 reliability?

13 A Yes.

14 Q And what is the basis for that opinion?

15 A When the -- basically the same measurement
16 apparatus -- in this case, not a ruler, but a series
17 of questions was applied multiple times, very similar
18 results were obtained. So whether or not the studies
19 were measuring what they purport to measure, the
20 reproduceability of results is remarkable.

21 So I would say that it's a reliable
22 measuring instrument, those used in the surveys. Over
23 time, you can get, as a researcher, much greater
24 confidence that those results -- are reproducible,
25 then it's a reliable measuring system.

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1 Q What is the basis for your knowledge
2 concerning the consistency of results of the surveys?

3 A I mean, seeing the results.

4 Q Okay, have you reviewed the testimony of
5 Mr. Trautman in this proceeding?

6 A Yes, portions of it.

7 Q Okay, let me direct your attention to a
8 table up here that's on page VI of Joint Sports
9 Claimants Exhibit Number 3 that was sponsored by Mr.
10 Trautman and ask have you seen that document before?

11 A Yes.

12 Q And I said document, but had you seen that
13 page in that document before?

14 A Right, that's what I thought you meant.
15 Yes.

16 Q Okay. In forming your conclusions
17 concerning the reliability of the cable operator
18 surveys introduced in this proceeding, had you taken
19 account of what is on that page VI of --

20 A Yes.

21 Q Okay. Now, let me ask you to turn back
22 again to page nine of your testimony.

23 A Okay.

24 Q Now you reference there as well an NAB
25 subscriber survey. Do you see that?

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1 A Yes, I do.

2 Q And that survey was done for ELRA, is that
3 correct?

4 A It was done by ELRA.

5 Q I'm sorry, it was done for NAB.

6 CHAIRPERSON JIGANTI: Mr. Garrett?

7 ARBITRATOR WERTHEIM: Was the page of Mr.
8 Trautman's exhibit that you just asked the witness
9 about the page where the figures were corrected for
10 one of the years?

11 MR. GARRETT: Yes, Your Honor, for the
12 year 1990.

13 ARBITRATOR WERTHEIM: Why don't you find
14 out which version the witness is referring to that he
15 reviewed.

16 MR. GARRETT: Okay.

17 BY MR. GARRETT:

18 Q Were you aware that the figures on page VI
19 of the document that I just showed you had been
20 corrected?

21 A I don't think so, no.

22 Q Okay. Let me direct your attention to
23 Joint Sports Claimants Exhibit Number 11, --

24 A Okay.

25 Q -- which is the corrected version of the

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1 table that appears on page VI of Joint Sports
2 Claimants Exhibit 3. Do you have that before you?

3 A Yes.

4 Q Okay. I believe I can represent to you,
5 Doctor, that the only corrections here were made
6 concerning the year 1990. Do you see that?

7 A Yes.

8 Q And do you see that the difference is that
9 the sports percentage goes from 37.2% in the original
10 exhibit to 37.1% in the corrected exhibit?

11 A Yes.

12 Q And that the movies percentage in the
13 original exhibit is 30.1, and in the corrected version
14 it's 30.2, do you see that?

15 A Yes, I do.

16 Q And that the syndicated shows, series and
17 specials goes from 15.6 -- I'm sorry, 14.5 in the
18 original survey to 14.3. Do you see that?

19 A Yes, I do.

20 Q And that the news and public affairs
21 remains unchanged at 11.9, do you see that?

22 A Yes.

23 Q And that the devotional and religious
24 programming goes from 3.6 in the original survey to
25 3.8 on the corrected version there?

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1 A Yes.

2 Q And that the PBS number stays the same at
3 2.7?

4 A Yes.

5 Q Having seen those changes, do you have any
6 -- do those -- strike that. Do those changes affect
7 the opinion that you had expressed a few moments ago
8 concerning the reliability of the cable operator
9 surveys introduced in this proceeding?

10 A No, they don't.

11 Q Now, let me ask you to turn to page nine
12 of your testimony.

13 A Okay.

14 Q I'll start again here. The final column
15 there, you reference an NAB subscriber survey. Do
16 you see that?

17 A Yes.

18 Q And that survey was done for NAB by ELRA?

19 A Yes.

20 Q And that was not a survey in which the
21 Joint Sports Claimants had any involvement, is that
22 correct?

23 A True.

24 Q Okay. Let me ask you now to turn to
25 Exhibit 35.

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1 A Okay.

2 Q Dr. Ducey, on Exhibit 35, you refer to
3 incidents of distant Form 3 carriage of U.S.
4 commercial television stations. Do you see that?

5 A Yes.

6 Q Okay, and on the top, you refer to total
7 incidents, correct?

8 A Yes.

9 Q And at the bottom there is a reference to
10 incidents of distant Form 3 carriage at the 3.75 rate.
11 Do you see that?

12 A Yes.

13 Q Now, were you -- have you reviewed the
14 testimony of Dr. Lemieux, one of the Joint Sports
15 Claimants witnesses in this proceeding?

16 A Yes.

17 Q Okay, are you -- do you recall that Dr.
18 Lemieux also referred to a term that he called
19 instances of carriage?

20 A Yes.

21 Q Okay. Do you know whether or not the term
22 instances of carriage as used by Dr. Lemieux is any
23 different than the term incidence of carriage that you
24 used in your Exhibit 35?

25 A I believe it's measuring the same thing.

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1 Q Okay. Let me just direct your attention
2 to page nine of Dr. Lemieux's report, which is Joint
3 Sports Claimants Exhibit Number 2, and direct your
4 attention to the portion that I have marked and ask
5 that you just read that into the record, please.

6 A Okay. "Royalty payments for distant
7 signal retransmission are determined using a 'distant
8 signal equivalent,' DSE, basis. Independent and
9 foreign stations count as one full DSE for royalty
10 purposes, while network affiliated and non-commercial
11 educational stations are valued at 0.25 DSE."

12 "Using this system, a cable system
13 carrying a distant independent station, a Canadian
14 station, a distant educational signal and a network
15 affiliate would pay royalties for 2.50 DSE's, or the
16 equivalent of one plus one plus .25 plus .25."

17 "Throughout distribution proceedings, the
18 Tribunal -- and treats all types of signals equally.
19 On this basis, our hypothetical cable system with 2.5
20 DSE's would generate four instances of carriage, one
21 for each signal carried. I will use this instance of
22 carriage measures in the analysis to follow."

23 Q Okay. Now, does that passage confirm your
24 understanding, Dr. Ducey, that your reference to
25 incidents of carriage and Dr. Lemieux's reference to

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1 instances of carriage is indeed the same concept?

2 A Yes.

3 Q Now, you'll see on page ten of Dr.
4 Lemieux's report that he provides data concerning
5 instances of carriage in 1989, second accounting
6 period in 1992, second accounting period.

7 A Okay.

8 Q And of course, you also provide
9 information on these incidents of carriage in your
10 Exhibit 35, correct?

11 A Yes.

12 Q Now as I look at or compare the two
13 charts, there seems to be some differences in the
14 amount of information that's included and also in some
15 of the numbers. Is that consistent with your
16 understanding?

17 A Yes.

18 Q Okay. And that's because yours is limited
19 here at the top to incidents of carriage by U.S.
20 commercial stations, is that correct?

21 A Yes.

22 Q And Dr. Lemieux provides additional data
23 concerning non-commercial stations, correct?

24 A Yes.

25 Q And Canadian stations, correct?

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1 A Yes, and Mexican.

2 Q Right. Okay, now he also focuses only on
3 the second accounting period of 1989 and 1992. And
4 the numbers there are slightly different than the
5 numbers that you have, is that correct?

6 A Yes.

7 Q Could you tell us what the differences are
8 in terms of magnitude?

9 A Looks to be on the order of a couple
10 hundred on the base of 3,400 or so.

11 Q Well, let's see. You have a number of
12 3,643 instances or incidents of carriage for WGN,
13 WPIX, WSBK, WTBS and WWOR, correct?

14 A Yes.

15 Q And what is the comparable number for
16 those five for Dr. Lemieux's report?

17 A Well, he's -- the category is the original
18 super stations he has three of the five, and that
19 number is -- am I looking at the right one?

20 Q Yes.

21 A Okay, I think he's got three of the five
22 super stations, and that comes to -- for 1989-2,
23 3,413.

24 Q And then if you add WPIX and WSBK?

25 A Looks like it would be the same.

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1 Q When you say it would be the same --

2 A As -- well, he had in those two stations
3 -- let me get my calculator, but it looks like it's
4 going to be about the same number as the 3,643.

5 Q It's very close, is it not, but it's not
6 identical?

7 A Yeah, right.

8 Q Okay, and that same would be true of 1992-
9 2, is that correct?

10 A Yes.

11 Q Okay. They're slightly different, but not
12 identical, correct?

13 A Yes.

14 Q Okay, I mean, can you explain the
15 differences between what you have and what Dr. Lemieux
16 has just so the record is clear on this?

17 A Explain the differences?

18 Q Yeah, why do the numbers come out slightly
19 different from your -- in your table as compared to
20 Dr. Lemieux's table?

21 A I'm not sure. It could have been the time
22 at which the data observations were made.

23 Q When were your data observations made?

24 A In August, I think it was, of this year.
25 I mean, that's when we got the data.

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1 Q Okay. And you got it from the Cable Data
2 Corporation?

3 A Yes.

4 Q And your understanding is that Dr. Lemieux
5 also got it from the Cable Data Corporation?

6 A Yes.

7 Q Okay. Now, incidents -- as you term it,
8 incidents of carriage, or as Dr. Lemieux terms it,
9 instances of carriage, treat all signals equally,
10 correct?

11 A Yes, in terms of --

12 Q Right. You don't take account of the fact
13 that some stations have a DSE value of .25 and some
14 have a DSE value of 1.0, correct?

15 A Correct.

16 Q And you haven't presented any date here,
17 have you, as to how much the cable operators actually
18 pay for these different distant signals taking account
19 of the different DSE values?

20 A That's correct.

21 Q Dr. Ducey, let's go back for a moment to
22 KPLR's carriage, which is also referenced I believe in
23 Tab 13 of your testimony.

24 A I think that's right.

25 Q Again, just very briefly, Doctor, tell me

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1 what the purpose was of this exhibit and the
2 comparable exhibits that you attached to your
3 testimony.

4 A The Tuscaloosa-Tacoma phenomenon that when
5 signals are carried on a distant signal basis by
6 cable systems, essentially it's not a large geographic
7 distance that the carriage by cable systems signals
8 like KPLR is regionally clustered within a 150 mile
9 circle.

10 Q Okay. And I think you referred to it
11 earlier as giving indirect evidence of viewer avidity
12 for station produced programs. Do you recall that?

13 A Yes, I do.

14 Q Now Dr. Ducey, were you aware that station
15 KPLR is the flagship station for the St. Louis
16 Cardinals?

17 A Yes, I'm aware of that.

18 Q You know who the St. Louis Cardinals are?

19 A Yeah.

20 Q Would it be fair to say that the -- that
21 subscribers within -- cable subscribers within the 150
22 mile radius of St. Louis would have an interest in
23 games of the St. Louis Cardinals and KPLR?

24 A I would think so, yes.

25 Q Would it be fair to say that the cable

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1 operators within 150 miles of St. Louis would have --
2 would place value on the telecast of the Cardinals
3 over KPLR?

4 A Yes.

5 Q Now, if I turn to the index to all of your
6 tabs which appears right before Tab 1, --

7 A Okay.

8 Q This lists all of the television stations
9 for which you provided the maps showing cable carriage
10 within a 150 mile radius, is that correct?

11 A Yes.

12 Q Okay. Is it your understanding, Dr.
13 Ducey, that a number of these stations listed here are
14 also flagship stations of one or more professional
15 sports teams?

16 A Yes.

17 Q And for example, you have a reference here
18 to station KDKA, Tab number 11?

19 A Yes.

20 Q KDKA is the flagship station of the
21 Pittsburgh Pirates during these years, is that not
22 correct?

23 A I don't know for sure, but that would be
24 my impression, yes.

25 Q And if we assume that it was the flagship

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1 station of the Pittsburgh Pirates that appear on these
2 lists, would it be fair to conclude that subscribers
3 within 150 miles of Pittsburgh, Pennsylvania would have
4 an interest in seeing the games of the Pittsburgh
5 Pirates on station KDKA?

6 A Yes, I would think so. From my days as a
7 channel program manager, I know that sports was the
8 kind of programming that subscribers are particularly
9 interested in. So we tried to bring in sports from
10 distant signals as often as we could.

11 Q And you reference, do you not, in your
12 testimony that station WNDU, for example, which is
13 next to Tab 29, --

14 A Right.

15 Q -- televised games of Notre Dame, for
16 example?

17 A Right.

18 Q Dr. Ducey, in your Exhibit 5, you have a
19 number of letters there. My understanding is that you
20 obtained these letters from the public inspection file
21 of station WGN, is that right?

22 A Yes.

23 Q The first letter there is the one that
24 references the Chicago Cubs.

25 A Right, and Bulls.

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1 Q And also Cookie the Clown and the Bozo
2 show?

3 A Bozo.

4 Q Were you aware that my wife, when she was
5 a little girl, once danced on the Bozo show?

6 (Laughter.)

7 She's still waiting for her cable
8 royalties for that! Dr. Ducey, in examining the file
9 at WGN, did you come across any other letters that
10 specifically referenced the Chicago Cubs?

11 A Yeah, I think in this collection of
12 letters baseball and WGN is mentioned a number of
13 times.

14 Q Were there any letters that are not
15 included that -- at Tab 5 that mentioned the Chicago
16 Cubs -- or Frank Thomas, for that matter?

17 A There could be, I'm not sure.

18 Q Okay. If you should ever run across any
19 of those, Dr. Ducey, could you send them to me?

20 MR. STEWART: Because Bob sent them into
21 the station!

22 THE WITNESS: They all had the same
23 handwriting.

24 BY MR. GARRETT:

25 Q Well, if it was my handwriting, nobody

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1 could read it. Dr. Ducey, let me just -- so that I
2 understand your testimony, you talked earlier about
3 the avidity that subscribers have for news and public
4 affairs of other station's news programming, do you
5 recall that?

6 A Yes.

7 Q And I think at various points you also
8 referenced the avidity that subscribers have for
9 sports programs?

10 A Yes.

11 Q And at various points were asked by Mr.
12 Lane about the avidity of subscribers in the movies or
13 syndicated programming, do you recall that?

14 A Yes, I do.

15 Q And the subscribers also have avidity for
16 PBS programming?

17 A True.

18 Q And I know my colleagues from the
19 Devotional Claimants will be up next, so I'm sure
20 they'll draw it out of you as well, but there's
21 avidity for Devotional Claimants' programming,
22 correct?

23 A Yes.

24 Q And would you agree with me that certainly
25 station produced programmings have value to cable

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1 operators?

2 A Absolutely.

3 Q And sports programs also have value to
4 cable operators?

5 A True again.

6 Q And that -- we all have value to cable
7 operators here, don't we?

8 A Yes.

9 Q Would you agree with me also, Dr. Ducey,
10 that some programs -- some program categories have
11 more value than others to cable operators?

12 A Yes.

13 Q Would you agree with me that the purpose
14 of this proceeding here is to determine what those
15 differences in value are among the different types of
16 programs?

17 A I would agree with that.

18 MR. GARRETT: Okay, I have no further
19 questions.

20 CHAIRPERSON JIGANTI: Thank you, Mr.
21 Garrett. Mr. Campanelli?

22 MR. CAMPANELLI: I think Mr. Garrett has
23 been looking at my notes.

24 CHAIRPERSON JIGANTI: How many cross
25 examination -- then you will have some --

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1 MR. STEWART: Brief redirect.

2 CHAIRPERSON JIGANTI: -- redirect. I
3 think maybe at this time we'll take a recess.

4 (Whereupon, the proceedings went off the
5 record from 3:39 p.m. until 3:55 p.m.)

6 CHAIRPERSON JIGANTI: When you're ready,
7 Mr. Campanelli.

8 MR. CAMPANELLI: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. CAMPANELLI:

11 Q Dr. Ducey, good afternoon. I'm Rick
12 Campanelli for the Devotional Claimants.

13 A Good afternoon.

14 Q Let's look at page nine of your testimony.
15 You remember -- we've been there before, I think. As
16 you are looking for that, I'm going to just see if
17 this is a fair summary characterization of your
18 testimony, that cable operator valuation is the key
19 element for evaluation in the distant cable market.
20 Is that a --

21 A Yes.

22 Q And also that subscriber preference or
23 what we're also referring to as avidity is a factor or
24 an indicator of this cable operator preference?

25 A It's a factor, yes.

1 Q Yes, okay. All right, well now looking at
2 page nine where we've been before, let me just read
3 this first full sentence after the table. "As these
4 percentages show, there is strong, consistent evidence
5 from different independent surveys that both cable
6 operators and cable subscribers value station produced
7 programs proportionately higher than the viewing share
8 of those programs." That's a phrase from the
9 sentence.

10 A Yes.

11 Q Okay. Now let's look up here at the
12 station produced data that gives rise to that
13 statement. What you're referring to there and in the
14 table which we can look and the chart at Exhibit 1, I
15 think, --

16 A Yes.

17 Q -- look at that station produced program.
18 There you show a 17.1% showing of the subscriber
19 survey?

20 A Yes.

21 Q And 13.3% in the subscriber survey, and
22 only 17.24% in the MPAA survey, correct?

23 A 13.3 in the operator survey.

24 Q I'm sorry, operator, thank you -- in the
25 operator survey. And 17.24 in the MPAA viewing

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1 survey, right?

2 A Yes.

3 Q And so your point about that is that you
4 have subscribers and operators who are valuing this
5 programming much more highly than would be reflected
6 in their viewing data, correct?

7 A Yes.

8 Q Look at sports as another example. In the
9 subscriber survey, 25.4%; in the operator survey,
10 35.7%; but in the viewing survey, only 10.01.

11 A Correct.

12 Q And again, it's the difference between
13 those two operator surveys and the subscriber survey
14 and the viewing survey that you're emphasizing here?

15 A Yes.

16 Q And those are reflected on this chart at
17 Exhibit 1, correct?

18 A Yes.

19 Q Now I don't see Devotional Claimants on
20 that chart of Exhibit 1. Is that a -- the paper was
21 just a little too long -- too short there, right?

22 A Exactly.

23 Q But we can -- let's imagine the chart. If
24 we go back to the table on page nine, --

25 A Okay.

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1 Q -- and there we see -- well, why don't you
2 go ahead and just read what the subscriber survey and
3 operator survey results are?

4 A For devotional, subscriber survey is 7.8%
5 of the valuation goes to devotional programming; and
6 for the operator survey, 17.2%.

7 Q And we had nothing to do with the
8 production of those surveys or commissioning those
9 surveys -- the Devotionals had nothing to do with
10 those, is that correct?

11 A Nothing on this earth.

12 Q And -- well, that's a good point!

13 (Laughter.)

14 That's right. But we don't lose any
15 credit for the help we get from above. Okay, now
16 comparing it to the MPAA viewing survey, what was the
17 result there?

18 A The MPAA viewing study, 0.65% of the
19 viewing.

20 Q Now in that case, when you compare those
21 two, the -- your point is again that the -- if you ask
22 the subscribers or the cable operators how they would
23 value devotional programming, it's much greater than
24 what would be reflected in a viewing survey, is that
25 correct -- in this viewing survey?

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1 A Yes, yes.

2 Q So if I go back to a phrase I read earlier
3 right under the chart there, "as these percentages
4 show" -- if I substitute the word devotional, let me
5 just see if you still consider it accurate, okay? "As
6 these percentages show, there is strong, consistent
7 evidence from different independent surveys that both
8 cable operators and cable subscribers value devotional
9 programs proportionately higher than the viewing share
10 of those programs."

11 A Yes.

12 Q Okay. Okay, let me draw your attention --
13 let's talk a little bit more about avidity. Let's go
14 to page 11. And this is an issue that you raised
15 about instrumental viewing versus ritualized viewing.
16 And I also want to point out that -- and see if you
17 confirm that ritual has nothing to do with devotional
18 programming in this case, right?

19 A True.

20 Q The -- now here, let me just briefly draw
21 your attention to this first full paragraph -- not the
22 quoted paragraph, but the text on page 11 that starts
23 -- I'll read it. "In other words, people can engage
24 in either instrumental use or ritualized use of
25 television programming with important differences in

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1 their purpose and experience."

2 "Instrumental use is linked to content
3 gratification, ie. this specific program content is
4 important to me, I will plan to watch it when it's on.
5 Ritualized use is linked to process gratification, ie.
6 watching anything on TV is better than the next best
7 alternative."

8 A Yes.

9 Q Okay. Now, let me just ask you, would you
10 -- my understanding of the reason you're emphasizing
11 or bringing to light this instrumental versus
12 ritualized difference is that your point is that
13 instrumental viewing correlates with subscriber
14 preferences, which will be an indicator of cable
15 operator preference for programming?

16 A Yeah, roughly.

17 Q Well, let me see if I can state it another
18 way, that instrumental viewing correlates with
19 subscriber preference and avidity for a program?

20 A Yes.

21 Q And your anticipation is that avidity will
22 result to some extent -- or to the extent a program --
23 to the extent that a viewer has an avid desire to
24 watch a program and is an instrumental viewer of a
25 program, that that will correlate with -- more with a

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1 decision to subscribe to a cable channel?

2 A Yes, yes.

3 Q Or to retain their subscription?

4 A To the system, right.

5 Q Okay. Now let's just flip to your letters
6 that you referred to in the Exhibit 5. And I want to
7 refer to those letters that have been discussed a
8 little bit already. They're about 12 pages back, I
9 think, referring to religious programming.

10 A Okay.

11 Q And again, the religious -- this is not an
12 effort to have included all the religious letters
13 referencing religious programs, is it? There might
14 have been others in the program file?

15 A Exactly. Yes, there might have been.

16 Q Okay, the first one that I want us to look
17 at -- I found three here. The first one that's --
18 it's undated, but it's from a man named James Stalich,
19 I think.

20 A Yes, I see that.

21 Q It says, "Please reconsider and let the
22 Mass For Shut Ins back on the air soon. I will cancel
23 my WGN portion of cable if you don't -- or do not.
24 Best regards."

25 (Laughter.)

1 Okay, now let's -- there's that one. And
2 that shows, even though he -- he's saying there I'll
3 cancel my WGN subscription. He can't do that, can he?

4 A Not to my knowledge.

5 Q But what is he showing about -- what would
6 you say he's demonstrating here about his desire for
7 this program?

8 A He wants it. It demonstrates an avidity.

9 Q And does it affect his preference for the
10 show -- his preference for subscribing to cable?

11 A Yes.

12 Q Okay. Let's look at the next one. This
13 writer on a letter date January 27th says, "Please
14 don't let the Sunday Mass be removed from your
15 schedule. If Chicago isn't going to televise it,
16 there must be some other channel that will."

17 What do you understand that suggestion to
18 mean -- what is she suggesting in this letter?

19 A The viewer wants to follow the program.
20 It's the program that matters, and if she can't get it
21 from one source, she'd like to get it from another
22 source.

23 Q Okay, when she says there must be some
24 other channel that will, does that indicate to you
25 that she's suggesting to the cable operator that he

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1 should or -- that she's suggesting that she would
2 watch it on some other channel if it was available,
3 right?

4 A Yes.

5 Q Okay. And last, just another example here
6 is -- and we don't have to go through it, but the last
7 letter on -- that was previously referred to, the '90-
8 '92 letter is another letter, but is objecting to the
9 removal of the Mass For Shut Ins, right?

10 A Yeah, Catholic Service for shut ins.

11 Q Oh, sorry, thank you, Catholic Service for
12 shut ins. Now, viewers who write in like this and
13 complain about the loss of one program, would you
14 consider them to be instrumental in their viewing for
15 the program they're referring to?

16 A Yes.

17 Q And when you say -- or in your testimony,
18 you refer to this statement that says the instrumental
19 use is linked to content gratification. You describe
20 it then -- you say this specific program content is
21 important to me. Is that demonstrated by these sorts
22 of letters from religious viewers?

23 A Yes, it is.

24 Q And I will plan to watch when it's on --
25 so would you agree then that religious programming

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1 fits within the category of programming which is
2 instrumental?

3 A Yes, it can for some viewers.

4 Q Okay. Let me just ask you a follow up
5 question. Here you said the program is in -- content
6 is important to me, I will plan to watch it when it's
7 on. And I don't think you've talked about this
8 already, but if a viewer watches a program, decides to
9 turn it on specifically for watching that program,
10 your point is that's instrumental and that correlates
11 with the decision to subscribe to cable or to retain
12 it.

13 Would you think it's also consistent with
14 a viewer desire with instrumental viewing for a viewer
15 after the program is over to turn it off -- to not
16 watch whatever follows on?

17 A Yes.

18 Q And why is that?

19 A They're trying to -- well, it depends on
20 the specific content. In your hypothetical, I'm
21 assuming that the next program doesn't match what
22 they're looking for, so they turn the TV off. TV
23 on/off behavior is directed by what's available in
24 terms of content. If what they want in content is not
25 available, the TV goes off.

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1 The ritualistic viewer, it doesn't matter,
2 the TV stays on. It's the process of watching TV
3 they're after, not specific content.

4 Q So the more specific the tastes of the
5 individual viewer are and the more that's reflected in
6 their decision to turn it on and off the television
7 set for their specific programs they desire to watch,
8 that will correlate highly with an instrumental --
9 with an instrumental viewing?

10 A Yes.

11 Q Which also correlates with subscriber
12 preferences and retaining cable subscription?

13 A Yes.

14 Q Okay. Okay, let me just ask you a brief
15 other set of questions now. On page 13, this is a --
16 something that is related to that special relationship
17 that you talk about where viewers actually develop a
18 special relationship. Now, what is your point in
19 bringing out the special relationship of viewers?

20 What influence do you think that has -- or
21 relationship does that have to the cable -- decision
22 to subscribe to cable or to retain a cable
23 subscription?

24 A Parasocial relationships are a form of
25 instrumental viewing. You can watch specific content

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1 to be informed or to be excited. Parasocial is one
2 other type of relationship that happens under this
3 idea of instrumental viewing. I watch to see my
4 friends on TV or the newscast or whatever and learn
5 more about them and hear from them what's going on.

6 Q Okay. And I just note here on page 13 in
7 the second paragraph there you talk about it being a
8 special relationship. You say that people relate to
9 news anchors, reports and personalities as their
10 "trusted friends."

11 A Yes.

12 Q Actually, that whole line was a quote.
13 And then also you talk about a personal link between
14 the two. What accounts for the personal link, let's
15 say with an anchor man or an anchor woman? What
16 accounts for that personal link, would you say?

17 A From the viewer's perspective?

18 Q Yes.

19 A Well, it gets into this psychological
20 process. Gratification sought, what they're looking
21 for, and assuming in this case for a parasocial
22 perspective, they're looking for some psychological
23 satisfaction for affiliation, need to be near
24 somebody, need to have a friend, need to feel like
25 they're sharing something or feeling close to somebody

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1 else.

2 So then you get into more academic jargon.
3 You can do a functional analysis, and there's a whole
4 set of social science research that does that of the
5 available options to deal with the psychological drive
6 or need or gratification sought. You go through a
7 various decision making tree. Am I going to go to the
8 mall and maybe meet somebody?

9 Am I going to go to the office? Am I
10 going to go out on the street and go for a walk?
11 Among that array of functional alternatives, do you --
12 something predisposes you to select TV at a certain
13 circumstance. And that's how you satisfy that need to
14 affiliate.

15 Q Okay. And in that -- to establish that
16 kind of personal relationship, would you say that the
17 characteristics of, let's say, with an anchor person
18 -- that characteristics would be -- that a person
19 looks to is reliability of that individual, trust for
20 that individual -- you mention trust here?

21 A Yes, yes.

22 Q And the sense that the personality -- is
23 there something about the sense of personality on TV
24 that's actually interested in this viewer and --

25 A Yeah, in the uses and gratification

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1 research, programming techniques that are explicitly
2 directed to the viewer tend to be more involving, more
3 attention, and engenders more instrumental types of
4 viewing. So as an example, for news teams, there was
5 this format or element of the newscast format "happy
6 talk" where the sports team -- the news team would
7 talk among one another.

8 Sports person was talking to another
9 person, and so that would be an attempt to engage the
10 viewer as part of the "news family."

11 Q I see.

12 A And they would sometimes speak to the
13 camera, you know, what do you think of that joke. And
14 that would be a technique or a mechanism to try to
15 involve viewers instrumentally in the program
16 experience.

17 Q Now I don't know if you're aware, but in
18 devotional programming, a lot of the format for
19 devotional programming, sometimes it's an individual
20 who's delivering a sermon to his congregation. Other
21 times, it might be a talk show format where the person
22 is interviewing guests and is talking directly to the
23 viewer and there's call in aspects.

24 Would you anticipate that viewers of
25 devotional programs would have strong personal

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1 identity with an individual on the air?

2 A Of the different elements you suggested to
3 me, the talk show format is specifically linked with
4 instrumental viewing, particularly the call in format.
5 That again engenders an opportunity for viewer
6 involvement, in this case quite literally, not just
7 parasocially. But the talk show format, discussion
8 format, and the call in format are associated with
9 instrumental viewership.

10 Q Right. And again, instrumental viewership
11 is associated or correlated with the decision to
12 subscribe or to retain subscriptions to cable?

13 A Yes.

14 Q Okay, thank you very much.

15 CHAIRPERSON JIGANTI: Thank you, Mr.
16 Campanelli.

17 CROSS EXAMINATION

18 BY MR. COSENTINO:

19 Q Hello, Dr. Ducey. My name is Victor
20 Cosentino. I represent the Canadian Claimants.

21 A Good afternoon.

22 Q I'd like to ask you first about
23 regionalism, for example, as it's shown on this chart.
24 Besides reasons such as parasocial interaction, are
25 there other reasons that these cable systems in the

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1 outlying areas would want to carry a signal from a
2 major city?

3 A Well, for the news, information, cultural
4 events in terms of the regionalness of it. And not to
5 mention that program appeal is -- larger market
6 station tend to have more resources to put into
7 programs, so there may be more local programs per se
8 on because they have more resources to devote to that
9 function. And each individual program, they have
10 values that are appealing, more different camera work,
11 more editing, more allocation.

12 Q Okay, so better production values.
13 Variety, is that -- cultural affinity to that region,
14 would that be true?

15 A Yes, yes.

16 Q Now in this particular example for KPLR,
17 you have cable systems in Missouri and cable systems
18 in Kentucky and -- no, not in Kentucky, in Illinois.

19 A Yes.

20 Q So this regionalism crosses state borders,
21 right?

22 A Yes.

23 Q And I think if we look in your exhibits,
24 number 23 --

25 A Okay.

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1 Q The chart there shows a signal in Chicago
2 affecting -- being carried by systems in Illinois,
3 Indiana, Michigan and Wisconsin?

4 A Yes.

5 Q Okay, is there any reason to believe that
6 the regionalism crosses borders -- would that end at
7 a national border?

8 A Not in my experience, no.

9 Q Okay, so there is a reason to believe that
10 people living on the border between Canada and the
11 United States might also experience this kind of
12 regionalism?

13 A Yes.

14 Q Okay. Let's see, actually, I just want to
15 change gears then and direct you to your testimony at
16 page seven.

17 A Not page nine?

18 Q Not page nine. Oh, I tried to make it
19 work. Okay, on page seven at the bottom, you say "And
20 much of this as part of the research conducted by
21 cable operators gave the subscriber interest in
22 channels, not programs." So how would -- if a cable
23 operator wanted to do this, what does this mean? What
24 kind of surveys do they do of their subscribers?

25 A Well, for example, at the system I was at,

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1 we would prepare surveys and the questions would ask
2 people to respond to channels and they -- perhaps the
3 programming attributes or specific programs that tend
4 to be carried on all those channels. But preference
5 ratings would be developed for channels.

6 Q So you would ask them to compare two
7 channels or to rank a series of channels, is that the
8 type of thing?

9 A Something like that, yes.

10 Q Okay, would you ever ask them to, say,
11 compare a channel such as -- I don't know, what
12 channels did you carry, do you recall?

13 A I don't remember them all. I mean, --

14 Q Can we -- if we picked something like CNN
15 or A&E, would that be --

16 A For me, when I was -- those weren't around
17 when I was at the cable system.

18 Q Okay.

19 A Or CNN was, but --

20 Q Well, any two channels.

21 A Local stations, business stations, yeah.

22 Q Okay, or cable networks?

23 A Cable network, yeah.

24 Q Okay, would you ever ask them to, say,
25 compare WTBS to just the movies shown on the USA

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1 channel?

2 A No, it would be usually on entire channels
3 or just attributes of channels. And that's what the
4 -- that TBS study looked like that.

5 Q So you would never come up with a
6 situation where you would say compare TNT to this
7 syndicated series on WTBS?

8 A I suppose you could, but I don't know why
9 anybody would, and I'm not familiar with any such
10 circumstances.

11 Q All right, is this the type of thing that
12 if you were trying to measure the subscriber interest,
13 would this type of comparison work? I mean, would it
14 really tell you anything meaningful?

15 A It's sort of, in my judgement, apples and
16 oranges. If you're interested in what about a channel
17 is attractive to a subscriber, you might pursue that
18 -- what attributes are you interested in. Or you
19 might compare two channels. If you had to make a
20 choice, which channel would you want to keep?

21 I'm not sure I see the usefulness of, say,
22 would you rather keep this channel or these movies on
23 USA. I mean, if such a practical circumstance exists,
24 I suppose you could do it, but I don't see why you'd
25 want to.

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1 Q Okay. In terms of measuring subscriber
2 interest, would such a survey that compared signals or
3 channels to a programming category have a high -- what
4 was the term you used -- constructive validity?

5 A Construct validity?

6 Q Construct validity.

7 A I'm asking a subscriber, for example, to
8 compare TNT to the movies on USA?

9 Q Right.

10 A Well, like I say, I'm not exactly sure
11 what that's supposed to be measuring, so --

12 Q Subscriber --

13 A Interest?

14 Q -- interest.

15 A In what?

16 Q In the different types of -- the channel
17 and the programming.

18 A In this particular circumstance, that may
19 make some sense because TNT, as I understand it, is
20 essentially movies. So you're comparing movies to
21 movies and trying to get some kind of rating. So in
22 that sense, there probably would be some construct
23 validity if you're talking in a more general case.

24 Q If it was a more general channel than,
25 say, TNT -- more of a broad -- it would have a more

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1 broad spectrum of carriage --

2 A Right.

3 Q -- than TNT. What's a good example?

4 A USA?

5 Q Maybe USA versus the movies on TBS.

6 A Okay.

7 Q Now in that particular case?

8 A Well, what I'm trying to measure is
9 subscriber avidity to programming. And my measures
10 are, as you're suggesting, some measurement of
11 preference -- some measurement of liking to the movies
12 on TBS and some measurement of liking to the movies to
13 the USA network.

14 Q Right.

15 A I guess that would not be what I would do
16 in one of my surveys.

17 Q Okay, it's apples and oranges, like you
18 said, is that --

19 A Sort of, yeah. Maybe Macintosh and
20 Delicious apples or something, I don't know. But it's
21 not -- I mean, it's not a very -- good construct
22 validity. I mean, there's some construct validity
23 present in that, but it's not a very good measure.

24 ARBITRATOR WERTHEIM: Is there a way of
25 getting the viewer preferences as between different

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1 movie libraries?

2 THE WITNESS: Oh, sure, yeah. If you're
3 -- two movie libraries, you might pick some of the
4 most easily recognized movies that would bring out --
5 if people have seen the movie and are familiar with
6 it, they'd say okay, I know that movie. So you could
7 do that if you got a few of the most familiar titles
8 to people and asked them to rate those two library
9 collections.

10 The risk there is, if the movie collection
11 numbers in the hundreds, how are you going to
12 represent that with a few titles? You could read all
13 300 titles in the library, but the person would be
14 asleep by about 212. So it's -- compare two libraries
15 of movies, you could do that easier than comparing a
16 segment of one type of station's programming with a
17 whole other channel.

18 ARBITRATOR WERTHEIM: They're not distinct
19 enough that a regular viewer would probably have a way
20 of characterizing one channel's movies compared to
21 another channel's movies?

22 THE WITNESS: I guess from -- I think
23 that's probably -- that's what I would say. I'm
24 trying to imagine what would be in the respondent's
25 mind. I guess if I was the respondent to such a

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1 question that you're constructing, in my mind I would
2 be comparing movies to an array of other programming,
3 and then which do I like.

4 Personally, I like movies, but I don't
5 watch movies all the time. So I don't know, I suppose
6 I would make some relative valuation. But it's just
7 not -- it doesn't feel right as a researcher to use
8 that kind of a measure the way I'm understanding your
9 hypothetical.

10 BY MR. COSENTINO:

11 Q Okay. Now we talked about in terms of
12 asking that of subscribers.

13 A Yes.

14 Q If we asked cable operators the same
15 question, would you run into the same basic type of
16 problems?

17 A Comparing -- I guess generally, yes.

18 Q Okay. Let me just go through my notes one
19 second.

20 A Sure.

21 Q Now switching gears for the last time, I
22 hope, earlier this afternoon you talked with Mr.
23 Hester about the way the Canadian and PBS results were
24 averaged in to the whole studies in the ELRA studies.
25 Do you recall that?

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1 A Oh, yes, yes. Well, averaged in -- I'm
2 not sure what you mean by that. But the way they were
3 measured, we talked about.

4 Q Well, --

5 A I mean, the zero weighting if they weren't
6 offered to respondents to react to?

7 Q Right.

8 A Yes.

9 Q Okay. Does that seem -- so the way it was
10 done was, you asked all these people questions. If
11 they had a Canadian signal or a PBS signal, you asked
12 them to make an allocation.

13 A Yes.

14 Q They were asked?

15 A Yes.

16 Q If they didn't make a -- if they didn't
17 have that signal, they were assigned a zero
18 essentially.

19 A By default, yes.

20 Q That's the way it works when you average
21 across the whole system, right?

22 A Yes.

23 Q Okay. Do you know what the average was
24 for just the Canadian systems that answered? Do you
25 have that data so that we could look at what the

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1 average response was?

2 A The subset of respondents --

3 Q Yeah.

4 A -- that were responding to Canadian as an
5 option? I don't think I've seen that.

6 Q Okay, I mean, if you look at this Exhibit
7 2, --

8 A Right.

9 Q It looks pretty bad for the Canadians,
10 doesn't it?

11 A Right.

12 Q Now if we flip over to -- in your Exhibit
13 2, -- let me find the page here. I think page 14 of
14 the second study -- of the first study. Page 14 of
15 the first study. It shows that we only asked -- we
16 were only on 14 systems.

17 A This is the operator survey?

18 Q Right.

19 A Yes, yes.

20 Q And so across those 14 systems, we were
21 probably a lot higher than .4, right?

22 A Across those 14 systems, yes.

23 Q Okay, is there a way to figure that out?

24 A Across the 14 systems? Oh, I'm sorry, I
25 was reading the numbers wrong. I don't know. I can't

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1 read from the data -- I can't say anything about it.

2 Q Well, not meaning to trick you or
3 anything, but I think there's a way to figure it out,
4 and I wanted to go through with you and see if you
5 agree.

6 A Sure.

7 Q And maybe it would help if we wrote stuff
8 down. Now it's my understanding that the way we got
9 to the .4 was we just took the sum of all the answers
10 for the Canadians and divided it by the total number
11 of respondents -- average is the sum over n, right?
12 So we know that the average was .4.

13 A Yes.

14 Q And we know that the n was what, 284?

15 A Yes.

16 Q Now how would we figure out the sum of the
17 --

18 A It would be the -- every respondent that
19 provided a value. It would be the sum of those
20 values.

21 Q Right. So couldn't we just multiply these
22 two numbers together to get -- and could you do that,
23 Dr. Ducey? See, I'm not going to make you do it in
24 your head like Mr. Garrett did. Boy, that was tough.

25 MR. GARRETT: I did it in my head.

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1 THE WITNESS: 113.6?

2 BY MR. COSENTINO:

3 Q Okay, and so that's the sum. Now, if we
4 wanted just the average of a subset, couldn't we
5 divide that by 14?

6 A I guess so, yeah.

7 Q Could you do that?

8 A 8.1?

9 Q Okay. So it would be 8.1, and that would
10 be the average allocation here would be -- and using
11 this chart, could be \$8.11?

12 A Yeah.

13 Q Okay, for the Canadians, which puts them
14 higher than religious programming and higher than PBS
15 for just that set.

16 A I don't know, because we haven't pulled
17 out the evaluations for those relative program types
18 in this subset that you've just isolated.

19 Q Okay. Well, we know that the religious
20 programming is across the whole set, right?

21 A Yes.

22 Q So then we know that for our -- comparing
23 our subset to the whole set, it is higher.

24 A For your -- the subset that many stations
25 appear. Yeah, this looks to be.

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1 Q And that number, 8.11, either as a percent
2 or as \$8.11, is more than 20 times higher than the .4
3 that's shown in this chart, right?

4 A Yes.

5 Q So for those people that got our signal,
6 they didn't think it was only a .4 percent, right?

7 A So it appears.

8 Q Okay. Dr. Ducey, I think that's it.

9 MR. COSENTINO: I have no further
10 questions. Thank you.

11 CHAIRPERSON JIGANTI: Thank you, Mr.
12 Cosentino. Are there any others to cross examine?
13 Not redirect, just cross. Mr. Farmakides has a
14 question.

15 ARBITRATOR FARMAKIDES: I'd like to go
16 back to that question at the outset. I was really
17 looking to compare Form 1 and 1 against Form 3.

18 THE WITNESS: Sure.

19 ARBITRATOR FARMAKIDES: And the initial
20 question had to do with a cash flow.

21 THE WITNESS: Okay.

22 ARBITRATOR FARMAKIDES: If you were
23 looking at your Exhibit 16 or 17, one of your maps --
24 it doesn't really make a difference. One of them that
25 has both Form 3's and Form 1's.

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1 THE WITNESS: Okay.

2 ARBITRATOR FARMAKIDES: In other words, a
3 couple of them had Form 2's, I know. And there was
4 one that had Form 2's and Form 3's. There were a
5 couple that had Form 2's and Form 3's. Whether or not
6 there's a Form 1 in there doesn't make that much
7 difference, although I would like to compare Form 1 as
8 well.

9 I'm looking to see from your experience
10 and your knowledge something that I've heard about the
11 last week or so -- a tremendous amount of testimony
12 and we've been enjoying it very much, but I just want
13 to test a little bit of it.

14 THE WITNESS: Okay.

15 ARBITRATOR FARMAKIDES: Would you take a
16 Form 1 or Form 2 cable system and tell me how you
17 would advise them in a given market which involves one
18 of your maps how they would improve their -- what are
19 the considerations that you would talk over with them?

20 THE WITNESS: Generally, you want to --

21 ARBITRATOR FARMAKIDES: Just generally.

22 THE WITNESS: Sure, okay. There is long
23 term and short term perspectives from a financial --

24 ARBITRATOR FARMAKIDES: By a long term,
25 you mean what?

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1 THE WITNESS: Well, capital investments.
2 When you build a plant to begin with, the cable
3 infrastructure --

4 ARBITRATOR FARMAKIDES: Let's hear the --

5 THE WITNESS: Okay. All right, so you
6 want to build a cable system in the community. And
7 first -- I mean, typically, if I'm giving the advice,
8 you'd say to a company, you know, why would you pick
9 this community over some other community. Let's say
10 you're in the community, then you want to estimate the
11 propensity of that population on a households basis to
12 actually make a purchase decision to subscribe to
13 cable.

14 Then you overlay that in the geography of
15 whatever community you have, and to the extent the
16 cable franchise would allow you to do this, figure out
17 where basic subscribers cluster, if at all; and within
18 that group, which of those subscribers are more likely
19 to be premium subscribers -- buy at least one premium
20 service.

21 And then arrange your build out schedule
22 so that you serve the subscriber base that's going to
23 give you the most money soonest. Some cable
24 franchises don't let you do that. They make you serve
25 other areas of the community first. But essentially,

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1 you've got a long term capital investment. Maybe it's
2 ten years or something or 14 years, so that franchise
3 may be 15 years long and you may arrange your
4 financing so that that's the length of the capital
5 commitment.

6 But you want to generate operating
7 revenues from them as much as you can. After 15
8 years, the build out schedule is completed, and you've
9 passed all the houses you're going to pass, and then
10 it's a matter of trying to recruit those households
11 into the subscriber base.

12 But in the long run, you want to front end
13 as many of those revenues as you can, so you want to
14 get two houses that are likely to subscribe as quickly
15 as you can with your cable runs down the trunk line
16 and down the little distribution lines into individual
17 neighborhoods.

18 Once you have -- established and you've
19 dealt with the build out schedule, then you want to
20 have some complement of programming services that will
21 satisfy -- make them want to subscribe in the first
22 place. There will be some mix of tiers, basic tiers,
23 and then premium tiers, and different kinds of
24 services.

25 Overall, what you're trying to do is earn

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1 some return on your capital investment. And you want
2 to have that -- those returns starting to accrue at
3 the front end of your investment, to the extent you
4 can. So you'd like to have more subscribers come in
5 sooner. And each subscriber, the average amount of
6 money they pay you per month, you'd like to maximize
7 that.

8 The ideal subscriber is somebody who is a
9 basic subscriber and subscribes to all of your pay
10 tiers.

11 ARBITRATOR FARMAKIDES: Okay. I think I'm
12 alert to that. Let's shift to -- that's three -- in
13 Form 3.

14 THE WITNESS: Okay.

15 ARBITRATOR FARMAKIDES: This particular
16 cable system is mature.

17 THE WITNESS: Sure.

18 ARBITRATOR FARMAKIDES: Very successful.
19 And definitely the gross receipts are well into the
20 half a million per year.

21 THE WITNESS: Okay.

22 ARBITRATOR FARMAKIDES: All right, if you
23 were to advise him how he could improve that person's
24 -- that cable system's cash flow, what would you think
25 of? What would be your consideration?

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1 THE WITNESS: Well, it's original
2 considerations both on the revenue side and on the
3 expense side and -- within a context of available
4 plant. Depending upon the channel capacity and the
5 utilization of that inventory -- of the channel
6 inventory, different options would be available.

7 Also, to get into the technology of the
8 cable industry, what that plant is like -- what the
9 state of the amplifier technology is. Is it state of
10 the art amplifier technology? What kind of trunk
11 lines? Are they coaxial cables? Is it fiber optics?
12 What kind of services can be supported? That has
13 implications of what kind of revenue streams you might
14 develop.

15 For example, in 1995, the big excitement
16 in the cable industry is the ability to enter
17 telephony -- get the local telephone company to offer
18 voice telephone and data services. So in 1995, being
19 a Form 3 cable operator and looking for a new
20 revenues, still, as I understand it, the big target
21 for cable operators is basic subscriptions and using
22 basic subscriptions.

23 And then secondly, selling premium tiers.
24 But that's incremental growth. If you want to get big
25 jumps in growth, you'd want to enter a new market. In

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1 this case, that would be voice telephony. But you'd
2 have to look at your capital plan and see if that can
3 support that kind of service with the switches, with
4 the actual cable -- is it fiber, is it copper, and
5 what kind of switching technology you have available
6 to you.

7 What -- in terms of the hardware in the
8 subscribe household, what kind of electronics are
9 available there.

10 ARBITRATOR FARMAKIDES: Now, with respect
11 to '90, '91 and '92, if I were to ask you a different
12 question, and that is I've got my cash flow maximized,
13 I want to minimize my expenses. One of the things I'm
14 concerned about is the royalties fees I have to pay.

15 THE WITNESS: Right.

16 ARBITRATOR FARMAKIDES: What would you
17 advise me in order to reduce my royalty fees as much
18 as possible, especially with respect to the 3.75
19 signal?

20 THE WITNESS: Okay, in that case, with
21 that objective specified, the point would be to focus
22 on the complement of distant signals that you're
23 carrying for which you're paying a royalty rate. And
24 then you can just go through an algorithm which tries
25 to create an optimal solution there.

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1 You're paying the least amount of
2 copyright royalty payments on the one hand, and on the
3 other hand, you're maximizing subscriber revenue. If
4 you drop a signal -- a 3.75 signal, say you dropped
5 that in this algorithm, and it's sort of an
6 interactive thing. You keep on running through it
7 until you maximize cash and minimize expense.

8 That would be the solution that you're
9 targeting. All subscribers aren't necessarily equal.
10 You drop a signal, and that makes this subscriber
11 disconnect -- some fraction of subscribers disconnect.
12 And to the extent you have highly valued subscribers
13 -- in other words, not only a basic, but they have one
14 or more pay tiers, that's bad.

15 So one subscriber with three pay services
16 are paying for it goes, that's going to bring down
17 your cash objectives. It helps the royalty payment
18 minimization part of the problem, but you're trying to
19 -- you have a seesaw back and forth. And you just go
20 through your -- to the extent you have the knowledge
21 about your customer base, what channels they prefer
22 and what they would do in the absence of those
23 channels, sometimes you estimate that with your
24 judgement of your subscriber base.

25 Sometimes you do a marketing survey to try

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1 to estimate. If you're trying to minimize expenses,
2 maximize revenues, then you go through different
3 channel collections to see what comes to the best
4 solution.

5 ARBITRATOR FARMAKIDES: And I'm also told
6 that you're also doing something else. You're trying
7 to maximize diversity.

8 THE WITNESS: Of programming?

9 ARBITRATOR FARMAKIDES: Of programming.

10 THE WITNESS: That's an outcome of the
11 primary objective. The primary objective is to get
12 that incremental subscriber on. If there's some mix
13 -- if you have a 36 channel cable system, you can only
14 have 36 channels delivered, what is the optimum mix of
15 36 channels from all the channels you could carry that
16 would get the most subscribers and hopefully the most
17 subscribers at a premium level.

18 So all of the potential market from an
19 economic perspective that you could tap into, you've
20 only got 36 ways to attract them to you -- your
21 channel line up. What -- of all the different
22 possibility of combining channels, which best solution
23 of 36 selections would attract the most basic and the
24 most premium subscribers.

25 ARBITRATOR FARMAKIDES: Have you measured

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1 that?

2 THE WITNESS: No.

3 ARBITRATOR FARMAKIDES: Not this mix? You
4 have not?

5 THE WITNESS: No.

6 ARBITRATOR FARMAKIDES: Has anyone
7 measured it?

8 THE WITNESS: I think the way you'd say it
9 in terms of royalty payments and revenues -- I mean,
10 it seems like a likely thing a cable operator would do
11 or multiple systems operator. But the ones that
12 operator systems, I'm personally unaware of --

13 ARBITRATOR FARMAKIDES: We were talking a
14 little while ago about, for example, once you buy a
15 signal, you take it for whatever it is.

16 THE WITNESS: Yeah.

17 ARBITRATOR FARMAKIDES: But if I'm a cable
18 system, and I've got one signal coming in and that
19 signal doesn't do it for me -- I have a lot of people
20 who want something else, I'd get another signal. It's
21 going to cost me, but then I have to balance that
22 against my improved mix.

23 THE WITNESS: Yes.

24 ARBITRATOR FARMAKIDES: But you don't --
25 okay, I think I understand most of what you're saying.

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1 THE WITNESS: Okay.

2 ARBITRATOR FARMAKIDES: Thank you. Some
3 of what you said.

4 ARBITRATOR WERTHEIM: I have a question.

5 THE WITNESS: Yes?

6 ARBITRATOR WERTHEIM: I don't think you
7 have provided it, but other witnesses in testimony --
8 there's some fairly good percentage of cable
9 subscribers turn over every year?

10 THE WITNESS: Yes.

11 ARBITRATOR WERTHEIM: Now do you have any
12 data or any information that would tell us are they
13 turning over -- switching to a different cable system
14 or just turning off to cable period? How many
15 subscribers live in an area where they have more than
16 one cable system available to them?

17 THE WITNESS: I don't know the exact
18 number. I think there's maybe -- of the 14,000 or so
19 cable systems in the country, I think it's something
20 on the order of several hundred have a choice of cable
21 systems. Virtually all cable subscribers have one
22 choice available to them.

23 ARBITRATOR WERTHEIM: But fewer than 1,000
24 would have the choice among different cable systems?

25 THE WITNESS: People, households?

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1 ARBITRATOR WERTHEIM: Yes.

2 THE WITNESS: I'm speaking of cable
3 systems. Maybe 300 or so. I don't remember the exact
4 number, but something on that order. Several hundreds
5 of cable systems are located in communities where
6 there's an additional cable system. And what that
7 factors out to be in terms of population, it would be
8 more than 1,000, I'm sure, but I'm -- it would be out
9 of the hundred million or so TV households, it would
10 be relatively few of those.

11 ARBITRATOR WERTHEIM: The overwhelming
12 majority of cable systems are in localities where the
13 local people have only a choice to subscribe or not to
14 subscribe?

15 THE WITNESS: Yes.

16 ARBITRATOR WERTHEIM: They have no other
17 system to turn to?

18 THE WITNESS: Well, there's -- there are
19 other choices for multi-channel delivery systems. In
20 the '90-'92 period, for example, there was increasing
21 popularity for something called wireless TV, which is
22 multiple channels of TV delivered using microwave. So
23 you'd get a little microwave reception dish that you
24 would put on your roof and subscribe to that service.

25 These days, there's also a direct

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1 broadcast satellite service, or DSS service available.
2 And then in some apartment buildings, there's a
3 service called satellite master antennae television
4 where they -- and the building would put up a
5 satellite dish and pull down all the satellite
6 delivered programming for the residents of that
7 building.

8 So there are some options. But for most
9 of the time, it would be a situation if you want to
10 get multi-channel television distributed to you, it
11 would be the cable choice. And this phenomenon which
12 cable operators refer to as churn is one of their
13 biggest problems.

14 And when I mentioned earlier that the
15 primary objective for the most part in terms of
16 revenue attraction is the basic subscribers, and that
17 is to reduce churn. Maintenance marketing they call
18 it. So I think churn -- the last figure I remember is
19 something on the order of 1.5% of the basic subscriber
20 base disconnects monthly.

21 And then you have to -- if you're going to
22 attract a non-subscriber back into the mix -- and in
23 fact, a fair number of the households, I think the
24 current penetration is 66% or something like that of
25 TV households subscribe to cable. Of that third that

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1 does not subscribe to cable, a fair number of those
2 have subscribed to cable and probably will come back
3 to cable eventually.

4 One of the ways a subscriber can express
5 dissatisfaction is to disconnect. Say I've had it
6 with you and I'm going to disconnect and cancel the
7 service. But then a little bit later, they might
8 reconnect. And there's a segment of the cable
9 subscriber base that is much more prone to this -- to
10 churning, which is expensive from a cable operator's
11 perspective than the rest.

12 But in terms of choices, for most American
13 television households, it's -- you can have this cable
14 system or not. For -- I'm not sure what the
15 percentage is, maybe a quarter of the households,
16 there's some sort of -- back in '90-'92, some sort of
17 option for another multi-channel service provider
18 available to them, whether it's microwave or a
19 satellite master antennae television, something like
20 that.

21 ARBITRATOR WERTHEIM: What's the cost of
22 the microwave dish to put on your roof or DSS service
23 generally speaking?

24 THE WITNESS: Yeah, well, it varies
25 between those two services. For microwave reception,

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1 it may be -- oh, I don't know, a couple hundred
2 dollars to install -- to buy the equipment and install
3 it. Sometimes it gets bundled into the monthly lease
4 arrangement that gets bundled in with the cost of the
5 service. The monthly price tends to be price
6 competitive with cable offerings.

7 So if you're paying around \$25 a month for
8 a cable service, you might expect to pay about that
9 much for wireless cable, microwave delivered
10 television. The satellite option has been more
11 expensive, maybe over \$1,000 to purchase the equipment
12 and then install it. More recently, I think it's down
13 now to under \$500 to purchase the equipment, and that
14 can be bundled into a monthly payment to get over that
15 initial entry price.

16 So the entry price for the alternatives is
17 steeper than cable. Usually the install rate -- and
18 with regulation, it's changed a little bit -- but the
19 entry price into multi-channel television services I
20 think generally is cheaper into the cable marketplace
21 than it is the alternative multi-channel providers.

22 But the monthly service fees are similar
23 -- competitive.

24 ARBITRATOR WERTHEIM: Thank you.

25 CHAIRPERSON JIGANTI: Mr. Garrett, do you

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1 have any redirect?

2 MR. STEWART: Mr. Stewart. I do have
3 redirect.

4 MR. GARRETT: He's Garrett.

5 (Laughter.)

6 CHAIRPERSON JIGANTI: Sorry, Mr. Stewart.

7 REDIRECT EXAMINATION

8 BY MR. STEWART:

9 Q Dr. Ducey, Mr. Cosentino asked you a
10 hypothetical about a survey that would ask some cable
11 operator to compare TNT with just the movies on WTBS.
12 Do you recall that?

13 A Yes, I do.

14 Q You said in that hypothetical you didn't
15 know why someone would want to ask that, correct?

16 A Right.

17 Q Okay, now let me make this question --
18 pose you a more concrete question. I'd like to direct
19 your attention to -- it's the testimony of Paul Bortz,
20 and I don't recall the exhibit number that's been
21 presented in this proceeding, but I direct your
22 attention to page 48, which is the constant sum
23 question of the 1992 system operator --

24 A Okay.

25 Q -- survey. Do you see that?

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1 A Yes.

2 Q Now in this question in Mr. Bortz' survey
3 of cable operators, if there were a Canadian station
4 carried by the cable operator or respondent, that
5 would be referred to as all programming broadcasts by
6 Canadian station, CBLT, or whatever, correct?

7 A CBLU.

8 Q Okay, and then that would be compared with
9 all of the different distant signal programming
10 categories on all of the other station -- distant
11 signals carried by the system, correct?

12 A Yes.

13 Q Now in your opinion, as opposed to the
14 hypothetical that he asked you about, does that
15 methodology have construct validity?

16 A Yes, you're comparing programming to
17 programming.

18 Q Right. And I just ask you before I turn
19 to some things Mr. Lane discussed with you, when you
20 were discussing the uses and gratifications research,
21 was that research you actually did yourself?

22 A Not -- no.

23 Q You're not the guy who invented parasocial
24 interaction?

25 A No.

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1 Q All right, but you were discussing
2 research done by others independently of any of the --

3 A Yes.

4 Q I have three points that Mr. Lane raised
5 with you there I want to talk about. First, directing
6 your attention to this map that's up on the board
7 here, which is talking to Exhibit 13, a map of KPLR
8 carriage by Form 3 distant signals, Mr. Lane asked you
9 whether you had included on this map the distant Form
10 3 cable carriage of other signal stations, do you
11 recall that?

12 A Yes, I do.

13 Q In effect, he was asking don't you have
14 650 of these maps that would show for each and every
15 station -- U.S. commercial station where they're
16 carried in relation to the home community?

17 A Either that or 650 stations plotted on the
18 same map.

19 Q Okay. Now, you did do an analysis that
20 encompassed all of the station -- all of the U.S.
21 commercial stations in St. Louis and all the U.S.
22 commercial stations across the country except for
23 those five super stations, isn't that correct?

24 A Yes.

25 Q What was that analysis?

1 A It revealed within 150 miles -- it was 86,
2 87% of the incidences of carriage within 150 miles.

3 Q So in effect, if you did all of those
4 maps, it would show that 86 point something percent
5 were within that 150 miles?

6 A Right, if you plotted all 650 stations --
7 not a real geography, but on a sort of theoretical
8 geography measuring Cartesian space, the 86% would be
9 within a 150 mile circle.

10 Q Okay. And with respect to the five U.S.
11 commercial stations that were left out of that
12 analysis, which were the five super stations, was
13 there an analysis done of the geographical clustering
14 of those stations that you produced in this
15 proceeding?

16 A Yes.

17 Q And that's Dr. Lemieux's testimony?

18 A Yes.

19 Q All right. Would you please turn to
20 Exhibit 24?

21 A Okay.

22 Q Look at the map there.

23 A Okay.

24 Q Now, do you recall that Mr. Lane asked you
25 about WTBS by comparison with WGNX in Atlanta,

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1 correct?

2 A Yes.

3 Q He asked you why you didn't have a map
4 that also showed the carriage of WTBS in relation to
5 the 150 mile zone, correct?

6 A Yes.

7 Q Now, do you know whether WTBS broadcast
8 any programming in this period of '90 through '92 that
9 was about Atlanta -- exclusively about Atlanta, a
10 local program about Atlanta?

11 A It may have been something like about the
12 Atlanta Olympics, but generally they're programmed not
13 to be a local station, but they present themselves as
14 a national station. So I would say no.

15 Q Okay, and WTBS is carried nationally?

16 A Yes.

17 Q Now how about WGNX, do you know if they
18 have programming about Atlanta?

19 A Yes.

20 Q What's the program you identified as an
21 example for this station? On page 22 of your
22 testimony.

23 A It was a weekly news program, Atlanta
24 Forum.

25 Q Okay, now looking at the map that shows

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1 where WGNX is distributed, do you think that program
2 that's about the community of Atlanta would be of
3 interest to cable operators in the region that
4 actually carried it?

5 A Yes.

6 Q Okay. All right, would you look at --
7 turn back to Exhibit 3, which is the super station
8 program listing.

9 A Okay.

10 Q The first page is WTBS. Now, you talked
11 about the Good News program before. Is there other
12 programming that's produced by the station that
13 presents news content?

14 A Yes.

15 Q What is that?

16 A The -- well, the third group of programs,
17 Sports Watch, Fashion Watch, and that series is News
18 Watch. And those are brief segments, ten minutes a
19 day.

20 Q News breaks that are frequently broadcast?

21 A Exactly.

22 Q Okay, now you also talked with Mr. Lane
23 about a morning newscast -- a news program on WTBS
24 that was a syndicated news program, correct?

25 A Yes.

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1 Q That was a CNN Headline News program
2 broadcast on WTBS, correct?

3 A Right.

4 Q Now, without going back once again to this
5 Exhibit 4, do you remember in WTBS's own research how
6 the attributes that related to News Break and Good
7 News ranked relative to the attributes that were
8 related to the syndicated news program Mr. Lane
9 brought to your attention?

10 A Well, frequent news breaks was one of the
11 most favorable attributes in terms of ratings by
12 subscribers.

13 Q So the subscribers reported more favorable
14 ratings for the station produced news programming than
15 for the syndicated news programming?

16 A Yes.

17 Q Okay, now what does it mean that CNN
18 Headline News is a syndicated program?

19 A It's broadcast on more than one TV
20 station.

21 Q Okay, so that means that the same program
22 is also on other stations in other markets, is that
23 right?

24 A Yes.

25 Q And if you look at a cable operator in a

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1 community, let's say St. Louis, and let's say that CNN
2 Headline News is already broadcast by another station
3 there, does that mean that those subscribers already
4 have that program free?

5 A Sure.

6 Q Because it's broadcast for free over
7 there?

8 A Correct.

9 Q Now, do you think that -- let's also talk
10 about CNN. Does CNN provide CNN news content to
11 potentially the cable subscribers?

12 A Yes.

13 Q And is that broadly distributed also?

14 A Yes.

15 Q So if the cable operator in St. Louis had
16 CNN on his system and also already had a free over the
17 air version of CNN Headline News, do you think that
18 the cable operator would find it very valuable to
19 receive another copy of Headline News from WTBS?

20 A If it runs at the same time, I don't see
21 it to be an additional value, no.

22 Q All right, and Mr. Lane said to you in
23 effect if a cable operator said -- reported that he
24 valued the news -- the morning news program on WTBS,
25 he wouldn't be talking about value that should be in

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1 Mr. Lane's category, is that right?

2 A Yes.

3 Q Okay, now let me direct your attention
4 again to the Bortz survey questionnaire for 1992 which
5 is on page 48 of this exhibit. And I'd ask you to
6 read the definition of the news and public affairs
7 program category that was actually read to everyone of
8 the cable operator respondents in this survey. Would
9 you read that out loud, please?

10 A Yes, the wording is news and public
11 affairs programs produced by or for any of the U.S.
12 commercial stations are listed for broadcast only by
13 that station.

14 Q For broadcast only by that station?

15 A Correct.

16 Q So if CNN Headline News is broadcast by
17 other stations, do you think a cable operator when
18 reporting value to that category would be referring to
19 the syndicated news program on WTBS?

20 A No.

21 Q Thank you.

22 MR. STEWART: No further questions.

23 CHAIRPERSON JIGANTI: Any other questions?

24 Thank you, Dr. Ducey.

25 THE WITNESS: Thank you.

1 CHAIRPERSON JIGANTI: Before we leave, I'd
2 like to ask you your list of witnesses. Apparently
3 they received calls at the Copyright Office. They
4 want to know when particular witnesses are going to
5 testify.

6 MR. STEWART: I'm sorry, I have advised
7 the parties and for the record, you do want it in
8 writing?

9 CHAIRPERSON JIGANTI: No.

10 MR. STEWART: Okay, for the record, we
11 will be presenting Mr. Paul Much on Monday morning,
12 and we expect, based on what we've been told about the
13 extent of cross examination that we will also be
14 presenting Mr. Larry DeFranco on Monday afternoon. On
15 Tuesday morning, we will have Dr. Steven Wildman. And
16 on Wednesday morning, we will have Ms. Carolyn Chang.

17 CHAIRPERSON JIGANTI: Tuesday morning Mr.
18 Wildman?

19 MR. STEWART: Dr. Wildman, yes.

20 CHAIRPERSON JIGANTI: And is Dr. Wildman,
21 is he going to be with us all day?

22 MR. STEWART: Based on what I've been told
23 by cross examination, yes.

24 CHAIRPERSON JIGANTI: Okay, and Ms. Chang
25 will be on --

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1 MR. STEWART: Wednesday morning.

2 CHAIRPERSON JIGANTI: Wednesday morning
3 over at our --

4 MR. STEWART: Yes, correct.

5 MR. LANE: Mr. Valenti will be Wednesday.

6 CHAIRPERSON JIGANTI: Yes, yes. That's at
7 1:00 Wednesday.

8 MR. HESTER: Your Honor, I had PBS Exhibit
9 4-X. This was the one we had discussed before and I
10 have reduced it to a more manageable size.

11 CHAIRPERSON JIGANTI: As I recall, there
12 was no objection to the concept. The question was the
13 execution of the smaller version, and I take it there
14 are no objections to it? It will be admitted.

15 ARBITRATOR WERTHEIM: Mr. Stewart, I'm
16 going to have to be a little bit late Wednesday
17 morning. You will start without me, please.

18 MR. STEWART: That's fine.

19 CHAIRPERSON JIGANTI: I'd appreciate it
20 perhaps if you did write out your testimony and give
21 it to Leah here.

22 MR. STEWART: I'm sorry, I will do so.
23 Mr. Chairman, is there any possibility the Copyright
24 Office will be closed as part of a government shut
25 down on Monday?

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1 CHAIRPERSON JIGANTI: We questioned them
2 yesterday, and she assured us that they have their
3 appropriation and they will not be affected.

4 MR. STEWART: Thank you.

5 MR. HESTER: Your Honor, I wanted to raise
6 one other matter. It relates to the PBS motion to
7 compel discovery or to strike in the alternative that
8 we filed yesterday. And Judge Wertheim rightly
9 noticed that we had asked for a pretty tight deadline
10 on that production of December 18, and I know that Mr.
11 Lane hasn't yet filed his response to our motion.

12 And there isn't any magic particularly in
13 December 18. We picked the date because it's the week
14 before Christmas and two weeks before the MPAA case
15 begins. And there is a sense of urgency, but if it's
16 December 18 or December 20, that's within the realm of
17 flexibility on our side, and I didn't want to suggest
18 that since we're now creeping up to December 18 that
19 somehow -- our motion.

20 We recognize that sometimes when parties
21 select a day like this, it's a little bit arbitrary.
22 Both Joint Sports and PBS have asked for production by
23 the 18th, and I think we both agree that we need it as
24 quickly as we can and sometime early in the next week
25 is what we're anxious for.

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1 CHAIRPERSON JIGANTI: Mr. -- okay,
2 anything further?

3 MR. STEWART: Mr. Chairman, just briefly.
4 We have not -- we've been busy, I'm afraid, and have
5 not filed a pleading in support of the motion to
6 strike the Lindstrom testimony if the full discovery
7 is not made. We share that position, and I would just
8 note that for the record.

9 CHAIRPERSON JIGANTI: Mr. Lane, when will
10 you have a response to that?

11 MR. LANE: Monday.

12 MR. CAMPANELLI: Your Honor, the
13 Devotional Claimants would share that same position on
14 the testimony of --

15 CHAIRPERSON JIGANTI: Mr. Lindstrom?

16 MR. CAMPANELLI: Yes.

17 CHAIRPERSON JIGANTI: Okay.

18 ARBITRATOR WERTHEIM: I assume we will
19 have a lot of material about Fox TV over the weekend?

20 MR. LANE: We filed that on Monday.

21 MR. GARRETT: I have copies here, Your
22 Honor.

23 CHAIRPERSON JIGANTI: Have you filed it
24 with the --

25 MR. GARRETT: Not yet. I just received

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1 it.

2 CHAIRPERSON JIGANTI: Okay, very good.

3 Thank you.

4 (Whereupon, the proceedings were adjourned
5 at 5:02 p.m.)

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CERTIFICATE

This is to certify that the foregoing transcript in
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 and 1992 Cable Royalty Funds

Before: Library of Congress
Copyright Arbitration Royalty Panel

Date: December 15, 1995

Place: Washington, DC

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
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Charles Rozett

PBS Exhibit 4-X

Hours

Time

Value

Viewing

14.5

$\approx 60\%$

X

10%

2

7

$\approx 30\%$

Y

40%

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2.5

$\approx 10\%$

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